REPORT RESUMES

ED 011 346 24 ED 011 346
THE "FREE SPEECH" CRISES AT BERKELEY, 1964-1965--SOME ISSUES FOR SOCIAL AND LEGAL RESEARCH.
BY- LUNSFORD, TERRY F.
CALIFORNIA UNIV., BERKELEY, CTR.FOR R AND D IN ED
REPORT NUMBER BR-5-0248-5 PUB DATE DEC 65
CALIFORNIA UNIV., BERKELEY, CTR. FOR STUDY OF LAW
CONTRACT OEC-6-10-106
EDRS PRICE MF-$0.27 HC-$7.52 188P.

DESCRIPTORS- *STUDENT ACTIVISM, STUDENT ATTITUDES, *LEGAL PROBLEMS, LEGAL RESPONSIBILITY, EQUAL PROTECTION, LEGAL SEGREGATION, POLICE SCHOOL RELATIONSHIP, POLICY FORMATION, POLICE ACTION, COURT LITIGATION, *ORGANIZATIONAL CLIMATE, BIBLIOGRAPHIES, *SOCIAL INFLUENCES, *RESEARCH PROJECTS, *UNIVERSITIES, RESEARCH AND DEVELOPMENT CENTERS, BERKELEY

AN EXAMINATION WAS MADE OF THE ISSUES AND EVENTS OF THE "FREE SPEECH" CRISES ON THE BERKELEY CAMPUS OF THE UNIVERSITY OF CALIFORNIA IN AN ATTEMPT TO PROVIDE THE BASIS FOR MORE SYSTEMATIC AND DISPASSIONATE STUDY OF CERTAIN ISSUES BEHIND THE STUDENT PROTESTS, AND TO STIMULATE SOCIAL AND LEGAL RESEARCH ON THESE ISSUES. FOLLOWING AN INTRODUCTION THE AUTHOR PRESENTED A BRIEF CHRONOLOGY OF SIGNIFICANT EVENTS DURING THE 1964-65 ACADEMIC YEAR. HE THEN DEALT WITH THE PROBLEM OF RESTRICTION OF EXPRESSION ON THE BERKELEY CAMPUS. QUESTIONS OF POLICY AND QUESTIONS OF LAW WERE TWO FACETS OF THIS PROBLEM THAT WERE EMPHASIZED. FINALLY, THE AUTHOR DISCUSSED RESEARCH DIRECTIONS AND RAISED FURTHER ISSUES WHICH DERIVE FROM THE TWO BROAD SOCIOLOGICAL PERSPECTIVES OF ORGANIZATIONAL ANALYSIS AND SOCIOLEGAL ISSUES. A BIBLIOGRAPHY CONCERNING THE BERKELEY STUDENT PROTESTS WAS ATTACHED TO THE REPORT. (GD)

A Report from

The Center for
Research and Development in
Higher Education

UNIVERSITY OF CALIFORNIA, BERKELEY

BR-5-0248-5
OEC-6-10-106
P.A. 24

The "Free Speech" Crises at Berkeley, 1964-1965: Some Issues for Social and Legal Research

TERRY F. LUNSFORD

U. S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Office of Education
This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated do not necessarily represent official Office of Education position or policy.

A study conducted in cooperation with the
CENTER FOR THE STUDY OF LAW AND SOCIETY

THE "FREE SPEECH" CRISES AT BERKELEY, 1964-1965:
SOME ISSUES FOR SOCIAL AND LEGAL RESEARCH

Terry F. Lunsford

Center for Research and Development in Higher Education
Center for the Study of Law and Society
University of California, Berkeley

December, 1965

CONTENTS

I. INTRODUCTION 1

II. THE BERKELEY STUDENT PROTESTS, 1964-65: A BRIEF CHRONOLOGY 4

III. SHOULD A UNIVERSITY RESTRICT EXPRESSION ON ITS CAMPUS? 17

COMPLIANCE WITH STATE LAW 18
The State Constitution 18
The Law Against Political Solicitation on State Property . . 19
Issues for Further Study 21

AVOIDING ON-CAMPUS ACTION BY "OUTSIDE" POLICE . 22
No Legal Sanctuary 22
Campus Police "Jurisdiction" 24
Issues for Further Study 25

AVOIDING JUDICIAL REGULATION OF ACTIVITIES ON THE CAMPUS 26
Constitutionality of the 1964 Restrictions 26
Constitutionality of Content-Regulation Generally 29
The Scope of Judicial Review 44
How to Avoid the Courts 45
Issues for Further Study 47

PROTECTION OF UNIVERSITY INTERESTS AND FUNCTIONS 49
Organizational Interests of the University 50
Organized Teaching and Research 54
Assuring "Academic" Standards of Extracurricular Discussion and Inquiry 57
The University as a Market Place for Ideas 59
The University as a Springboard for Social Action 61
The University as Guardian of "Democratic Government" . 66
Issues for Further Study 72

ACHIEVING UNIVERSITY "SELF-GOVERNMENT" AMID "POLITICAL PRESSURES" 75
Can a University Be "Politically" Independent? 76
Intellectual Community and Political Diversity 84
Issues for Further Study 97

IV. SOME SUGGESTED DIRECTIONS FOR RESEARCH 100

UNIVERSITY FORMS AND FUNCTIONS: ORGANIZATIONAL ISSUES 106

The Forms of University Authority 106
University Aims and Their Organizational Embodiment . . 113

UNIVERSITY GOVERNANCE BY RULES:
SOCIO-LEGAL ISSUES 123
The Scope and Bases of Administrative Discretion. . . . 123
The Effectiveness of University "Legal" Action. 130
Civil Liberties and Academic Freedoms of University Students 135

V. LIST OF RESEARCH MATERIALS 138

APPENDIX: NOTES TO THE TEXT 162

CHAPTER I

INTRODUCTION

The principal purposes of this report are twofold: first, to lay the basis for systematic and dispassionate study of certain issues, both practical and theoretical, which lay behind the student protests and surrounding events at the University of California, Berkeley, during the academic year 1964-65; second, to stimulate social and legal research on these issues. The events at Berkeley have been widely discussed, variously chronicled, and perhaps too freely interpreted. This report is not designed to add one more partisan interpretation, or to evaluate the actions of students, faculty, administrators, or Regents. In social conflicts running over a long period, such as those which occurred at Berkeley, issues can easily become obscured or confused, and may need to be clarified if an understanding of the situation as a whole is to be attained. Moreover, it is valuable to see issues in relation to each other and to a broader context. This report attempts to make such an analysis and clarification.

The events that occurred at Berkeley in 1964-65 are of wide interest to students, faculties, administrative officers, and governing boards of colleges and universities. It seems probable that many institutions will continue to experience student unrest and pressure for revision of regulations concerning the expression of controversial views by students, faculty members, and speakers from off-campus, and concerning the advocacy and organization on campus of social action in the wider community.

Section II of the report is a brief chronology of significant events during the academic year 1964-65 at Berkeley. It is necessarily selective, and draws heavily on accounts published elsewhere, as well as on official documents and first-hand observations. Its purpose is to provide a factual framework for the illustrative and analytical discussions following.

Section III takes as its point of departure the major substantive issue of the Free Speech Movement protest: whether a university should restrict expression on its campus. In the discussion of problems surrounding this issue, two kinds of questions are emphasized. These are (1) questions of policy, and (2) questions of law. Policy questions are practical ones which face administrators, faculty members, and other participants in or observers of university governance. Their form is normative: what should university policy be in this case? Legal questions closely affect policy determinations, but are of a different order, at once factual and predictive. They ask: What are the legal boundaries within which university policy may be set? On the basis of legal precedents and these specific circumstances, what would the courts likely hold to be the rights and obligations of the parties involved?

Section IV of the report discusses research directions a little more fully, and raises further issues which derive from two broad sociological perspectives. These are issues of "organizational" analysis and what we have called "socio-legal" issues; they are defined in this section.

Section V of the report is a list of references concerning the Berkeley student protests in particular. Notes and cited references are collected in an Appendix.

The report is based primarily on an extensive file of written materials assembled at the Berkeley campus with help from University officials, members of the Free Speech Movement, and others. It is also informed by first-hand observations and by discussions with a number of participants in the year's events. The research file is available to researchers interested in study of these problems. However, where possible citations in the text of the report were made to easily available published materials.

Of course, no one is neutral about the dramatic events that occurred during 1964-65 at Berkeley, and it has not been possible in this report to avoid all "interpretation" of them. Some interpretation is implied merely in the reordering of materials according to stated issues, and still more in the selection of some among the many statements made about each problem. Not all of the statements of any person on an issue are included, by any means; however, a strong effort was made not to misrepresent anyone's position. The substantive assertions of each party in the controversy were taken seriously in their own right.

At the same time, no attempt was made to "settle" issues of historical fact which have remained in dispute. Events were used to illustrate the ways in which issues arose, not primarily for their own sake or as proof for the assertions of a particular group. It is possible that some bias in selection was introduced by efforts to bring out subtleties in the issues not generally understood; again, however, no polemical intent was involved. Some repetition was necessary, because single events bore on several issues; some disjunctiveness among sections resulted from the attempt to suggest issues of different kinds in a single report.

The report and the research file on which it is based are results of a project conceived in late 1964 by T. R. McConnell, Chairman of the Center for Research and Development in Higher Education (CRDHE), and Philip Selznick, Chairman of the Center for the Study of Law and Society (CSLS), at the University of California, Berkeley. Members of the project advisory committee, besides Professors McConnell and Selznick, were Professor Burton R. Clark, of the CRDHE; Sheldon L. Messinger, CSLS Vice Chairman; and Professor of Law Sanford Kadish, of the Berkeley campus. Dependence on the advice and theoretical perspectives of these scholars will be evident to the reader in what follows. The specific content and shortcomings of the report are the responsibility of its author, Terry F. Lunsford. Extremely valuable help was provided by Glenn Lyons as research assistant, Marston Schultz and Christine Selsor as bibliographers, and Mrs. Joan Bajsarowicz as project secretary.

The project was begun with a subvention from the Carnegie Foundation for the Advancement of Teaching, to which special appreciation is due for responding quickly to the request for a modest grant. The project was completed under the auspices of the University of California's Center for Research and Development in Higher Education.

The academic year 1964-65 was one of trial and upset for most sensitive participants in the life of the Berkeley campus of the University of California. The hope of this report is that these trials can help us to gain a better understanding of universities in relation to the society of today, so that we may breathe new life into the ideals we hold for both.

CHAPTER II

THE BERKELEY STUDENT PROTESTS, 1964-65: A BRIEF CHRONOLOGY

Across the University of California's campus entrance at Bancroft Way and Telegraph Avenue in Berkeley, a 26 x 90-foot strip of brick walkway separates the city sidewalk from a row of short concrete pillars. In this narrow strip, University students were accustomed to setting up tables from which they handed out leaflets, recruited members, and collected money for various political and social causes. University regulations had long prohibited political advocacy, recruitment, and fund-raising on the campus. However, such activities had been going on unchallenged in the Bancroft-Telegraph strip for a number of years.

September 16, 1964: Student organizations on the Berkeley campus received a letter from Dean of Students Katherine Towle, dated September 14, saying that henceforth University policies would be "strictly enforced" on all property of the University, including specifically the area at the Bancroft-Telegraph entrance. The letter said that tables and posters would not be allowed in the 26-foot wide strip because they interfered with pedestrian traffic. Distribution of informational handbills and pamphlets would be allowed there, but "University facilities may not, of course, be used to support or advocate off-campus political or social action." Students immediately protested to Dean Towle.

September 17-18: Representatives of 18 student organizations, comprising a broad spectrum of political opinion, met with Dean Towle. They petitioned for use of the Bancroft-Telegraph area under tighter controls to ease traffic flow and dissociate political advocacy from the University as an institution. The 18 organizations formed a "United Front" to oppose the new ruling, and some groups predicted picketing, vigils, and civil disobedience in violation of the ban if University officials stood firm.

September 21: Dean Towle announced that student groups would be allowed to set up a limited number of tables at Bancroft and Telegraph, and to use a new "Hyde Park" area in the main campus plaza for speeches. But advocacy, fund-raising, and recruitment on behalf of "direct social or political action" were still banned. Protesting groups set up tables at Bancroft and Telegraph for a short time, and 200 students picketed the entrance to Sproul Hall, the main campus administration building.

September 22-25: Sporadic picketing and all-night protest vigils continued on the campus. After a Berkeley meeting of the Board of Regents, University President Clark Kerr announced he supported the ban on use of the campus for social and political action.

September 28: Pickets of the United Front paraded through the aisles of an outdoor University meeting. At the meeting, Chancellor Edward Strong, head of the Berkeley campus, announced that campaign literature advocating votes on propositions and candidates could be distributed at Bancroft-Telegraph and eight other campus locations.

September 29: Tables were set up on the Bancroft-Telegraph strip. Students manning them were officially warned that some of their activities violated University rules.

September 30: Two student groups set up tables in front of Sproul Hall and openly collected funds. University officials took the names of five students manning the tables and asked them to appear before Dean of Men Arleigh Williams at 3:00 p. m. Several hundred students signed a petition claiming equal responsibility. At 3:00 p. m., more than 500 students gathered outside Dean Williams' office on the second floor of Sproul Hall. The five cited students, plus Mario Savio, Sandor Fuchs, and Arthur Goldberg, as leaders of the protestors, were asked to enter Dean Williams' office to discuss disciplinary action. They refused to do so, demanding that all demonstrators be treated alike. The students remained in the building until about 2:40 a. m., and agreed to hold a rally in the plaza before Sproul Hall at noon the next day. By midnight Chancellor Strong had suspended the eight students "indefinitely."

October 1: Tables were set up in front of Sproul Hall. An ex-graduate student, Jack Weinberg, who was manning a table, was approached by Deans George S. Murphy and Peter Van Houten, and University Police Lt. Chandler. Weinberg refused to leave the table or identify himself, was arrested, and went limp. A University police car was brought into Sproul Plaza to remove Weinberg, at which point about 200 students sat in front and back of the car, preventing the removal of the car and Weinberg. The crowd grew to 3,000; 400 also "sat-in" on the second floor of Sproul Hall. When University police began to close the front doors of Sproul Hall at 6:15 p. m. (45 minutes earlier than usual), about 100 students charged the doorways and sat down in them to prevent the doors' closing. Two police officers were pulled to the floor; one was bitten on the leg and lost his hat and shoes, but these were returned when he left the doorway. After much discussion, the students left the building voluntarily at about 6:30 p. m.; however, the police car remained surrounded. Demonstrators demanded the release of Weinberg, the reinstatement of the eight students and discussions with the political organizations. Chancellor Strong refused to discuss these demands as long as the police car was held.

October 2: The police car remained surrounded. By 4:45 p. m., nearly 500 police officers from Alameda County were on hand. President Kerr and Chancellor Strong met with protest leaders at 5:00 p. m.: an agreement was reached at 7:15 p. m. Savio mounted the police car to read the agreement, and at his request the demonstrators left the plaza. The agreement provided, among other things: (1) The students would desist from all forms of illegal protest against University regulations. (2) Weinberg was to be booked and released; the University would not press charges, although the District Attorney might do so. (3) The duration of the eight students' suspensions would be submitted within one week to the "Student Conduct Committee of the Academic Senate." (4) A committee representing faculty, administration, and "students (including leaders of the demonstration)" would be set up to discuss all aspects of political activity on campus and "to make recommendations to the administration."

October 3-4: Over the weekend, the United Front was replaced by the Free Speech Movement, which included students who had become active in the protest but who were not members of organized political or social action groups.

October 5-15: Chancellor Strong named 10 of the 12 members of a Campus Committee on Political Activity (CCPA) to implement the agreement of October 2. FSM leaders immediately objected that they had not been consulted; they demanded "mutually acceptable decisions on the interpretation and implementation of the agreement." The FSM also demanded that the suspended students' cases be heard by a faculty committee responsible to the Academic Senate, not one appointed by and advisory to the Chancellor. Initially, the FSM's demands were denied, and the FSM threatened new demonstrations. Professor Arthur Ross mediated between the FSM Steering Committee and the administration. On October 15 President Kerr and Chancellor Strong agreed to expand the CCPA, and to submit the suspended students' case to an ad hoc committee appointed by the Academic Senate but advisory to the Chancellor (the Heyman Committee). On October 13 the Berkeley Academic Senate passed two motions, one favoring "maximum freedom of student political activity," the other calling for all parties "to resolve the dispute in a peaceful and orderly fashion." On October 15, a second resolution was passed; it noted that the October 13 motions had been "widely misunderstood as condoning lawlessness," and said: "this body reaffirms its conviction that force and violence have no place on this campus."

October 26: Chancellor Strong refused the request of the Heyman Committee that the suspended students be reinstated during the course of the hearings.

October 27 - November 9: The CCPA met seven times in an attempt to develop rules for student political action. FSM leaders insisted that, "in the area of first amendment rights and liberties," students be "subject only to the civil authorities." The administration wished to reserve the right of disciplinary action against "the students or organizations involved" if unlawful acts should "directly result from advocacy, organizing, or planning on the campus." Disagreement on this point was not resolved during the existence of the CCPA.

November 9: After announcing that its members would resume "exercising their constitutional liberties" on the campus, the FSM held a noon rally on Sproul Hall steps, set up tables there, and collected money in violation of University regulations. Names of about 75 persons were taken, and they were sent notices to appear at the Dean's office. President Kerr and Chancellor Strong jointly announced that the CCPA had been dissolved because the FSM had "abrogated the agreement of October 2," and that advice on regulations would be sought from the Academic Senate and the student government.

November 10: FSM members, including many teaching assistants, continued to man illegal tables in Sproul Plaza. Petitions were sent to the administration declaring that the signers had manned tables.

November 12: President Kerr made public the report of the faculty members who had sat on the CCPA. He called the report "a basis for constructive solutions" which "reflects, in part," his discussions with the group. He reaffirmed the University's devotion to the First and Fourteenth Amendments, but called for use of "legal methods" in resolving any controversy over "their application to University policy." The faculty members' report urged that: "The advocacy of ideas and acts which is constitutionally protected off the campus should be protected on the campus." But it suggested that "on-campus advocacy, organization or planning of political or social action . . . may be subject to discipline" where it "directly results in judicially-found violations of California or Federal criminal law," and responsibility is found "under prevailing legal principles of accountability," after a "fair hearing" before a faculty committee.

November 13: The Heyman Committee recommended that six of the eight suspended students be reinstated as of the date of their original suspension, with "censure" of no more than six weeks to be noted on their records. It recommended that the suspensions of Mario Savio and Arthur Goldberg be retained, but be set at six weeks (from September 30 to November 16). The report criticized both the student violations and the administrative rules and procedures used in punishing them. FSM leaders praised the report.

November 16: Tables were again set up on Sproul Hall steps. About 70 students were sent letters asking them to report for interviews concerning the previous week's violations.

November 18: Faculty members and FSM representatives addressed about 450 students at a meeting of campus teaching assistants, called by the Dean of the Graduate Division to discuss the "free speech" issue.

November 20: After a rally at Sproul Hall Plaza, about 3,000 demonstrators marched quietly to University Hall where the Regents were meeting, and gathered on a lawn across the street. FSM representatives attended part of the Regents' meeting but were not allowed to speak. The Regents approved the recommendation of President Kerr and Chancellor Strong that the eight students be suspended from September 30 to date, and that Savio and Goldberg also be placed on probation for the rest of the semester. New disciplinary proceedings for student actions after September 30 were authorized. The Regents also opened certain campus facilities to use "by students and staff for planning, implementing or raising funds or recruiting participants for lawful off-campus action, not for unlawful off-campus action."

November 23: At an FSM rally in Sproul Plaza, a statement from Chancellor Strong was read, announcing the new policy and promising new rules under it soon. FSM spokesmen declared the new policy unacceptable, since it would allow administrators to discipline students whose on-campus advocacy "led to" any off-campus civil rights demonstration later declared by a court to have involved illegality. At 2:00 p.m., about 300 demonstrators entered Sproul Hall; they left at 5:00 p.m., following a sharply split vote by the FSM Steering Committee.

November 28: Mario Savio and Arthur Goldberg received letters from Chancellor Strong, requiring them to appear before a faculty advisory committee on violations following September 30. Savio was charged with leading the demonstrators who entrapped the police car and the arrested person on October 1 and 2, with organizing sit-ins in Sproul Hall, and with biting a University police officer on the thigh. Goldberg was accused of leading the entrapment also, and of threatening a police officer with violent attack by demonstrators if Weinberg were removed. Later two other students received letters.

November 29-30: The FSM denounced the administration's action as "arbitrarily singling out students for punishment," called it "an attempt to provoke another October 2," and demanded the new charges be dropped. Chancellor Strong rejected the demands as attempts at "intimidation."

December 1: The FSM announced plans for "direct action" if the administration did not within 24 hours drop the new disciplinary action, agree that only the courts would regulate the content of speech, and stop further discipline for "political activity."

December 2-3: Approximately 1,000 singing demonstrators entered Sproul Hall and packed the halls except for center aisles. They refused to leave when told the building would be closed at 7:00 p.m. At 3:00 a.m., Chancellor Strong spoke on each floor, asking demonstrators to "cease your participation in this unlawful assembly," or face disciplinary action. At 3:45 a.m., acting on orders from California Governor Edmund G. Brown, 635 uniformed police officers began arresting demonstrators who refused to leave. The arrests took 12 hours, and included 768 persons. At 1:00 p.m. on December 3, an impromptu meeting of more than 800 faculty members voted to urge that discipline for student acts to date be dropped, that an Academic Senate committee be created for final appeal of all discipline involving political action, and that the Regents not "prosecute" students for advocating illegal off-campus action. A telegram to Governor Brown, signed by over 360 faculty members, protested the presence of outside police on the campus, and the exclusion of faculty observers from Sproul Hall during the arrests; it also called for the prompt release of the arrested students. Another telegram to the Governor, signed by 200 faculty members, reaffirmed support for President Kerr and Chancellor Strong. A statement by President Kerr that afternoon noted that the demonstrators,

> . . . in their effort to escape the gentle discipline of the University, . . . have thrown themselves into the arms of the less understanding discipline of the community at large . . .

Pickets began urging students and faculty members to stay away from classes in protest. Faculty members, teaching assistants, and students contributed more than $8,000 in bail money for arrested students.

December 4: About 5,000 persons attend an FSM rally. Demonstrators picketed major classroom buildings, and many faculty, teaching assistants, and students stayed away from classes.

December 5: The student government in an emergency meeting called for a halt to the strike, for enforcement of the new Regental rules, for court "leniency" toward those arrested, and for the dropping of disciplinary action against the four students. It also announced plans for a court test of jurisdiction over "illegal advocacy of off-campus political and social action."

December 6: It was announced that Chancellor Strong had been admitted to the hospital with abdominal pains and was expected to be there a week.

December 7: Some 16,000 students, faculty members, and staff gathered at 11:00 a.m. in the campus's outdoor Greek Theater to hear a proposed settlement by the newly formed Council of Department Chairmen. Its terms included cessation of the strike, acceptance of the new rules pending a committee report to the Academic Senate, condemnation of the December 2-3 sit-ins, and no University disciplinary action against students for protests through December 3. President Kerr spoke, accepting the proposal as effective immediately, pending the Regents' meeting the following week. As the meeting was adjourned, Mario Savio strode to the microphone, but was seized and dragged away by University police officers. A few minutes later he was released and allowed to speak; he told the crowd he merely wanted to announce an FSM rally at noon in Sproul Plaza. At that rally, nearly 10,000 persons rejected, by acclamation, the proposals of the Council of Department Chairmen. But the strike was called off as of midnight, in anticipation of the Academic Senate meeting set for the next afternoon.

December 8: After three hours of debate, the Berkeley Division of the Academic Senate passed, by a vote of 824-115, resolutions urging that there be no University discipline for political actions to December 8; that the University place no restrictions on the "content of speech or advocacy," or on "off-campus political activities"; that the "time, place and manner" of on-campus political activity be regulated reasonably to protect "the normal functions of the University"; and that future disciplinary measures "in the area of political activity" be determined by a committee of the Academic Senate. FSM supporters were jubilant, and announced full support for the resolutions. President Kerr declined comment until the Regents' meeting. Meanwhile, candidates of an FSM-affiliated political party (SLATE) won all seven contested seats in elections to the Senate of the Associated Students of the University of California, Berkeley (ASUC), the student government.

December 17: The Berkeley faculty's new Emergency Executive Committee met with 12 Regents for informal discussions. The Academic Council, representing the faculties of the University's seven campuses, recommended the Regents make an intensive study of political activity on the campuses, act so as to "give assurances" of full consultation with students and faculty, and indicate there is no intention to abridge constitutional rights. The Council also stated that President Kerr had "many times" indicated his belief that students should not be punished on campus for off-campus civil rights action.

December 18: The Regents announced a "comprehensive review of University policies" on political activity, during which existing rules would be enforced. They added that

> . . . The policies of the Regents do not contemplate that advocacy or content of speech shall be restricted beyond the purview of the First and Fourteenth Amendments to the Constitution.

The Regents declined to delegate authority over discipline in political areas to the Academic Senate. The Emergency Executive Committee announced that its discussions with the Regents provided assurance that "the advocacy of ideas and acts, which is constitutionally protected off the campus, will be protected on the campus," and that President Kerr had personally promised there would be no disciplinary action against students involved in the recent sit-ins. FSM leaders expressed disappointment in the Regents' action, but planned no action until after the vacation period.

December 28 - January 1: The Berkeley faculty's Committee on Academic Freedom released its recommended new rules for student political activity. Chancellor Strong announced on December 31 that these would become effective on January 4, but the following day said some points still needed further study.

January 2: After an emergency meeting of the Board of Regents, it was announced that Chancellor Strong had been granted a recuperative leave of absence.

Martin Meyerson, Dean of the College of Environmental Design, was appointed Acting Chancellor at Berkeley, effective immediately, for an "indefinite" period.

January 3: Chancellor Meyerson, with the concurrence of the Emergency Executive Committee of the faculty, announced "provisional" rules governing the time, place, and manner of political activity on campus. These provided for "temporary use" of Sproul Hall steps as an open-discussion area from noon to 1:00 p.m., and 4:00 p.m. to 6:00 p.m. daily, with University-supplied sound amplification.

January 5: The Berkeley faculty Senate approved its Emergency Executive Committee's interim report that the purposes of the December 8 resolution had been substantially achieved, and voted to file the Academic Freedom Committee's recommended rules until the Acting Chancellor could act in his own way.

January 6: A report to the Academic Senate by three members of the Berkeley law faculty was made public; it concluded that "content-oriented" restrictions on speech are unnecessary to protect the "special regulatory interests" of the University, and are "constitutionally unwise."

January 7-8: State Assembly Speaker Jesse Unruh set a "deadline" of two months for settlement of the Berkeley dispute before legislative action should be taken. Governor Brown told a news conference he opposed such a deadline.

January 12: Professor of Law David Louisell, in a supplementary opinion to the Berkeley Academic Senate, warned against encroachments by "civil authorities" if there should be a "blanket abdication of the responsibility historically assumed by universities" for student discipline. Constitutionality of rules would be upheld in most cases, he suggested, if carefully written in light of "what we, as educators, think is wise and fair."

January 21: A 90-page petition signed by 139 Berkeley faculty members was presented asking the municipal court to dismiss charges against the demonstrators arrested in Sproul Hall December 3.

March 3: John Thomson, a 22-year-old "non-student," was arrested by campus police for sitting on the Student Union steps displaying a sign with an allegedly obscene four-letter word written on it. Thomson said he displayed the sign to protest censorship and the lack of love in society.

March 4: Two persons were arrested for manning a table in the Bancroft-Telegraph strip with a sign displaying the same word, as part of a request for contributions to a "Defense Fund" for Thomson. A third was arrested for scribbling the word on note paper and handing it to police; a fourth was arrested in the lobby of the campus police department when he read aloud passages from Lady Chatterley's Lover containing the word. Two of the four were University students.

March 5: At a noon rally protesting the arrests, novelist Mark Schorer, Chairman of the campus English Department, stated he thought Thomson's "harmless bit of exhibitionism" should have been ignored, but that protests on behalf of such displays had "no place in the business of serious students" and threatened the faculty's ability to protect more serious student interests. Arthur Ross, Chairman of the faculty's Emergency Executive Committee, said the use of obscene words for their own sake had nothing to do with free speech. Similar comments were made public later by Chancellor Meyerson and by a Bay Area representative of the American Civil Liberties Union. At the rally, several students, including FSM leader Arthur Goldberg, used the word freely in speeches, protesting the "hypocrisy" of labelling such words "obscene" when others with the same meaning are not so considered. Others, including FSM leader Stephan Weissman, made similar points but did not use the word publicly. Some speakers argued that the issue of hypocrisy was connected with popular acceptance of U. S. military action in Vietnam, and attitudes toward economic and racial minorities in this country. On the complaint of University student Mark Van Loucks, Goldberg and another student were arrested for disturbing the peace.

March 9: President Kerr and Chancellor Meyerson announced at a surprise press conference their intentions to resign at the next Regents' meeting. A number of Regents expressed surprise at the announcements; some said they would ask that the resignations be withdrawn.

March 10: In a supplemental release, President Kerr referred to joining in "a dramatic step, which is not my inclination," to try to help stop the "degradation of freedom into license and a new confrontation at Berkeley." He also noted the need for "due process" in punishing "offenders" and for "faculty committees" to accept "responsibility for assisting in discipline." In a separate statement, Chancellor Meyerson said the recent "four-letter campaign" had "symbolized intolerance for the rights and feelings of others." He called for the ASUC Senate to develop a code of student conduct and suggest effective means of enforcing it. The press reported four Regents as agreeing "tremendous pressure" had been brought by some Regents for immediate expulsion of students arrested in the "obscenity" affair. At a noon rally attended by 3-4,000 persons, FSM leaders refused to call for President Kerr's retention, and assailed the Regents for "meddling" in "the internal affairs of the campus." They also denied responsibility or support for the obscenity controversy, and called for continuation of discussions on educational reform initiated by Chancellor Meyerson. The ASUC Senate unanimously called for Chancellor Meyerson to remain. The Emergency Executive Committee of the faculty, with a number of administrative officials, called for both to continue in office "in the interests of preserving the excellence of our University and our campus." Statements from faculty, student and administrative groups at other campuses publicly expressed strong support for President Kerr and asked him to remain.

March 11: Mario Savio told a rally of about 2,000 persons that President Kerr should not be asked to stay on. Savio said he thought the use of obscene language in public had been "irresponsible," though he questioned whether there should be laws upholding "standards of good manners." He said that many persons hoped for such incidents as excuses to strike back at the FSM for actions of the fall semester. A statement of the FSM Steering Committee denounced President Kerr's statement as a "dishonest and shameful" attempt to use "the phony issue of obscenity" to "slander our hard-won political freedom and our movement toward academic reform."

March 12: The Oakland Tribune published an "exclusive" story that Chancellor Edward Strong, in a report sent February 9 to the Regents, had charged the FSM protests resulted largely from unwillingness by President Kerr to deal "promptly and sternly" with violators of University rules. The newspaper also reported Strong as saying he had not been ill on January 2, but had been forced at a special Regents' meeting to take a leave or resign. President Kerr issued a statement emphasizing his long friendship with Chancellor Strong, and saying: "There were some mistakes and responsibility for them is widely shared." In an extraordinary session, the Berkeley Academic Senate voted 1,100 to 23 for a resolution condemning "willful flaunting of obscenity," calling for Kerr and Meyerson to remain, and asking that Meyerson be made full Chancellor.

March 13: After a lengthy special meeting of the Regents, President Kerr said that he and Chancellor Meyerson had agreed not to resign, and that "orderly and prompt" disciplinary action against the students involved in the obscenity controversy was proceeding "expeditiously." It was also revealed that Edward Strong had formally resigned as Chancellor. A resolution to dismiss students and teaching assistants involved in disruption of University administration was proposed by the Meyer Committee (formed by the Regents to study revision of University policies on student conduct), but after strong dissent it was withdrawn without being voted on.

March 16: An *ad hoc* faculty committee on the "obscenity" cases called six students to appear before it; four were charged with "conduct unbecoming a student." FSM spokesmen demanded "due process" for the students, including postponement of hearings until after the criminal trials on obscenity charges, so as to avoid self-incrimination by testimony which could be subpoenaed. The ASUC Senate, by a vote of 12 to 5, passed a resolution urging Federal government action on behalf of Negro rights in Selma, Alabama. By taking a stand on such an "off-campus" issue, it violated long-standing University policy.

March 18: Chancellor Meyerson banned the on-campus sale of the locally edited *Spider* magazine, which used the controversial four-letter word in a defense written by the accused students; he also banned a student-written play entitled *For Unlawful Carnal Knowledge*. Speaking at a meeting of 800 Berkeley faculty, the Acting Chancellor called for the encouragement of "free political discussion" for its educational value, but in a regulated role "secondary" to the University's primary objectives of "scholarship and learning."

March 23: The Faculty Committee on Student Political Activity, in a preliminary report to Chancellor Meyerson, supported his temporary ban on the magazine and play, but criticized the vagueness of the "time, place, and manner" rules invoked. Students on the *Spider* staff argued that the content, not the manner, of expression was being restricted, and that the content was "political." Thus, they contended, the ban violated the faculty's December 8 recommendations. Chancellor Meyerson ruled the magazine could be sold in the campus bookstore if the store manager wished, but could not be sold from tables on the main plaza.

March 26: The Regents ruled that, under long-standing policy, graduate students could not be readmitted to the ASUC and charged a compulsory membership fee unless at least half of the graduate students voted on the question, and two thirds of those voting approved. (About 32 percent had voted on February 24, with a majority, but less than two thirds, in favor. On March 2, undergraduates had voted 3,345 to 1,293 for a constitutional amendment readmitting graduates to the ASUC.) SLATE and FSM leaders charged that the President and Regents wished to deny ASUC membership to graduate students because they were generally believed to be more "liberal" than undergraduates. They contended that the previously unannounced "policy" had been conceived, only *after* well-publicized student votes, so as to provide a "retroactive" justification for this denial. The ASUC Senate, in an emergency meeting, ordered the election of graduate representatives despite the Regents' ban, on the ground that the votes taken had complied with the ASUC Constitution. At Charter Day ceremonies, a 125-member group calling itself the Faculty Forum circulated a draft statement which asserted the University's "inherent right" to set standards of appropriate conduct for "all who seek or accept membership in it," and which stated that "political rights" must be exercised in keeping with "the primacy of the university's academic functions."

April 1: Chancellor Meyerson issued revised interim rules on political expression, which allowed the sale of Spider at plaza tables "to serve the purposes of a student organization." However, he disagreed with the faculty committee and continued the ban on the play, saying its cover was "designed to affront the passer-by." In Municipal Court, arguments began in the "representative" mass non-jury trial of 155 FSM defendants. The 155 had been chosen from among the 690 Sproul Hall demonstrators who had pleaded not guilty to a series of misdemeanor charges, including trespass in a public building, failure to disperse from an unlawful assembly, and resisting arrest.

April 3-8: The Berkeley Academic Senate voted 187 to 7 in support of obedience to Chancellor Meyerson's revised interim rules, and created a new seven-member Policy Committee to report each January on critical issues needing the faculty's attention. On Sunday night, the Chancellor warned he would not validate an election scheduled by the ASUC Senate on readmission of graduate students and election of graduate representatives; later that night, the ASUC Judicial Committee temporarily enjoined the election. Candidates of the FSM's graduate affiliate, the Graduate Coordinating Committee (GCC), sponsored a "freedom ballot" in which some 7,300 voted, including about 31 percent of all graduate students. Readmission was favored by 7,184 to 868, and the ten GCC candidates "won" over an opposing group by 4-1 margins. However, the ASUC Judicial Committee ruled that graduate students could not be ASUC members in the present semester since they had paid only $2.50 of the $5.50 fee required for membership. With the Chancellor's encouragement, ASUC President Charles Powell began a poll of graduate students through University departmental offices.

April 19: At Chancellor Meyerson's request, the Academic Senate appointed a new Select Committee on Education to study possible campus instructional reforms.

April 20: The trial of nine persons, including three students, began in Municipal Court on charges of using obscenity in public.

April 21: It was announced that Arthur Goldberg had been dismissed and three other students suspended until September, 1965, "for their roles in March obscenity incidents." The action followed recommendations of a five-man ad hoc faculty committee (the Whinnery Committee) which had held hearings on the matter.

April 22-23: At noon rallies, GCC and former FSM leaders protested the penalties; some forecast direct action. A small group including Mario Savio sent the Regents a telegram demanding that the students be reinstated and more "due process" be observed in disciplinary actions. But there was open disagreement at the rallies on whether direct action was workable at the time.

April 26: Savio announced he was giving up leadership of the student movement, "lest I feel deserving of the charge of 'Bonapartism', which even I sometimes have made against myself." He urged broader student participation in protests of administrative actions.

April 27: The Meyer Committee's proposed new student-conduct rules were made public; the GCC countered with a proposed "Student Bill of Rights."

April 29: Former FSM leaders announced the replacement of the crisis-born FSM with a Free Student Union (FSU) designed for broader student participation in decision-making, which would use collective-bargaining tactics to secure student rights. The ASUC Senate voted to "strongly urge" that the Regents reject the Meyer Committee resolutions.

May 3-6: ASUC President Powell announced 38 percent of the graduate students had been polled; they voted 2,020 to 1,300 against compulsory ASUC membership and 1,871 to 1,265 against voluntary membership. Strong criticism of the Meyer Committee proposals, and of the idea of Regental rules for individual campuses, was made public by a group of 75 faculty members. In the annual ASUC elections, SLATE candidates lost the race for President and their bid for majority control of the ASUC Senate. After a "week of grace," the FSU's tables on the plaza were confiscated. At its first meeting, attended by 500 of a reported 2,500 members, the FSU voted to comply with administrative rules for setting up tables. A detailed commentary on the Meyer Committee proposals was sent to the Regents by 350 members of the Faculty Forum, asking that the proposed rules be withdrawn in their present form and reconsideration be given to the problems covered. The Council of the Berkeley campus Alumni Association voted unanimously in support of the Meyer Committee proposals.

May 11: By a vote of 192 to 24, the Berkeley Academic Senate declared the Meyer Committee proposals "unnecessarily restrictive," asked their reconsideration, and suggested the Regents leave regulations to the campuses within general principles oriented to "educational and scholarly objectives," protection of students' constitutional rights, and "reasonable standards of due process." In Los Angeles, the Regents made public the report of special counsel Jerome Byrne to a Regental committee studying the factors underlying the FSM protests. While criticizing the tactics of the protesting students, the report emphasized their idealism, suggested they had a valid grievance, and laid considerable responsibility on Regents and administration for creation of a climate of "distrust." It called for greater decentralization of operating authority to the campuses. Several Regents were immediately critical of the report. Meanwhile, the nine defendants charged with public obscenity and disturbing the peace were found guilty in Berkeley Municipal Court; they announced intention to appeal.

May 13-17: The FSU praised the Byrne Report and sent a telegram demanding that the Regents reject the Meyer Committee proposals. Representatives met with Chancellor Meyerson and President Kerr, who agreed to convey a request for permission to send FSU speakers to the May 20 Regents' meeting.

May 18: The ASUC Senate voted by 9-6 to allocate $400 to aid the appeal of the four students dismissed or suspended as a result of the "obscenity" controversy. Regents' Chairman Edward Carter telegraphed the FSU that it "enjoys no official status" in the University, and declined to hear its representatives since students had already been given a chance to comment on the Meyer Committee Report.

May 20: With Governor Brown's approval, the State Legislature by a two-thirds majority passed a bill making it a misdemeanor for any non-student to refuse to leave a University or State College campus after being asked to do so by a campus official.

May 21: The Regents accepted the report of the Meyer Committee, which said it had revised its proposed rules on the basis of comments received, and had referred them to President Kerr as a basis for regulations which he would develop. President Kerr recommended that the Regents, President and Chancellors further decentralize authority for campus operations, and that Chancellors "associate students, in an advisory role, more fully in the development of educational programs, cultural programs, etc." Members of the FSU, refused permission to speak at the Regents' meeting, left after charging the Regents had closed the "legitimate channels" and had created "a university built on distrust and dishonesty."

May 26: A preliminary report of the Berkeley faculty's Select Committee on Education was released; it strongly criticized the degree of attention given by the University to early undergraduate instruction, and to the idealistic motives of "a significant and growing minority of students."

June 8: The nine "obscenity" defendants received sentences ranging from 30 days in jail (Arthur Goldberg) to a 10-day suspended sentence, on their convictions of disturbing the peace. John Thomson received concurrent 15-day sentences for disturbing the peace and displaying obscenity in public; other "obscenity" ments were "suspended."

June 18: The Regents "approved the basic substance" of President Kerr's administrative decentralization proposals, which contemplated delegation of responsibility "for all matters not specifically reserved for action by the Board." The proposals mainly increased the Chancellors' authority over faculty appointments, budgets, and the planning of facilities. The Board also accepted the President's proposed new University policies on student conduct, which were "based on" the Meyer Committee's recommendations. To assure "consistent" policies, the Board rescinded several of its past actions, including the one of November 20, 1964 "concerning open discussion areas." On the same day, a report of the State Senate's Fact-Finding Subcommittee on Un-American Activities was made public; it made allegations of strong Communist influence against the FSM and a number of University employees, and asserted President Kerr's policies were overly tolerant of such influences. President Kerr told a news conference the report was "misleading," contained many inaccuracies, and unjustly accused University staff members. He defended his "Open Forum" policy of allowing on-campus speakers of many political persuasions. The press reported that one of the three Senators on the Subcommittee had refused to sign the report, saying most of it was "just drivel," which interspersed "totally unrelated activities of the past 30 years" so as to imply without "any concrete evidence" that "all recent campus action was a Communist plot."

June 28: Judge Rupert Crittenden of the Berkeley-Albany Municipal Court began announcements of his verdicts in the representative FSM sit-in trial. Most defendants were found guilty of trespassing in a public place and resisting arrest; the third charge, failure to disperse from an unlawful assembly, was dropped. Attorneys announced all the convictions would be appealed.

June 29: President Kerr's new student-conduct policies were made public. They state that: "Students have the right of free expression and advocacy," subject to Chancellors' regulations covering "time, place, and manner," and to the general standard that students must "conduct themselves in a manner compatible with the University's function as an educational institution." Campus regulations must "require orderly conduct, non-interfereence with University functions or activities," and "reasonable protection" against the creation of "involuntary audiences." The new policies became effective July 1, 1965.

CHAPTER III

SHOULD A UNIVERSITY RESTRICT EXPRESSION ON ITS CAMPUS?

This chapter title states the central question about which much of the "Berkeley controversy" of 1964-65 was centered. The question was not a new one; it had been debated in the University of California itself for at least 30 years.[1] But a complex set of events in late 1964 resulted in its debate and exploration on a level and with an intensity seldom existing before. In the process, issues were raised concerning the nature of today's university and its relation to society that reverberated far beyond the particular issue at hand, and questions were asked to which firm answers--which many had assumed were easily available--could not be found. As a result, the University of California found itself faced, in effect, with the task of justifying anew any regulation of on-campus expression, and its members still have by no means resolved their differences on the matter. For these reasons, it seems appropriate to take as our point of departure the main substantive issue itself.

In seeking to explain and justify the University's restriction of on-campus expression, administrators and faculty members over recent years have given a number of different kinds of reasons why some restriction is "necessary." This section describes and discusses the major types of justification which have been stated publicly. They are: (1) the necessity for compliance with state law, (2) the desirability of avoiding on-campus action by "outside" police forces, (3) the wish to avoid court regulation of on-campus affairs, (4) the importance of protecting University "interests" and "functions," and (5) the need to safeguard University "self-government" from "political pressure." At the end of each part, and following some subparts, specific issues of university policy and of its legal framework are stated to suggest beginning points for further analysis.

Compliance With State Law

When the 1964-65 student protests began, the University of California for many years had restricted expression on its campuses, not only as to the conduct permissible within the classroom or library, but in extracurricular areas as well. Two main legal grounds had been cited in justification of these restrictions.

The State Constitution

The 1963 University of California Policies Relating to Students and Student Organizations, which were in effect when Dean Towle's letter was sent on September 14, 1964, included a section prohibiting the use of University facilities:

> . . . for the purpose of soliciting political party membership or supporting or opposing particular candidates or propositions in local, state, or national elections[2] . . . [or] for the purpose of raising money to aid projects not directly connected with some authorized activity of the University. . .[3]

In a prologue to the Policies, President Clark Kerr stated in part:

> The University is required by Article IX, Section 9, of the California Constitution to be "entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its Regents and in the administration of its affairs," and hence University facilities and the name of the University must not be used in ways which will involve the University as an institution in the political, religious and other controversial issues of the day.[4] [Author's emphasis.]

It is now said by some University officials that the restrictions on political expression and activity resulted from "policy" determinations, made by the University Regents and President Robert Gordon Sproul in the 1930's and continued thereafter, rather than from authoritative legal interpretations of the State Constitution.[5] However, it is clear that in 1964 many persons took these and other statements in the Policies as the official University interpretation of its legal duty under the highest law of the State.

On October 1, 1964, Ernest Besig, executive director of the Northern California Branch of the American Civil Liberties Union (ACLU), issued a statement saying:

> The ACLU does not share the opinion of the University Administration that the constitutional ban on political and sectarian activity is aimed at students.[6]

Soon thereafter, the Berkeley-Albany Chapter of the ACLU issued a document entitled The Campus and the Constitution, which argued that the University could not restrict the content of speech on campus without taking responsibility for what it allowed students to say--and thus could best remain nonpartisan by refusing to restrict on-campus expression.[7]

Leaders of the FSM soon charged that University officials, while wrongly restricting student political activity, were violating the University's Constitutional "independence" of politics by publicly advocating the support of a bond issue, expected to supply capital funds for University expansion. University officials stated that such a bond issue was a "nonpartisan" matter not covered by the Constitutional clause.

University authorities have not publicly discussed the legal interpretation officially placed on Article IX, Section 9, of the California Constitution. In the October, 1964, discussions of the Campus Committee on Political Activity (CCPA), administration representatives made little reference to the State Constitution. On November 20, 1964, the University Board of Regents[8] modified its Policies to allow on-campus "planning, implementing or raising funds or recruiting participants for lawful off-campus action," clearly including political speech and activity. The Board thus apparently abandoned any contention it might have made that the State Constitution forbade such activities by University students and staff.

In this way, a long-standing justification for University political restrictions, taken as legally authoritative by many persons, was obliterated within a few months of public discussion, and without a court test.

The Law Against Political Solicitation on State Property

A second reason for restricting student political activity on University campuses was given by President Kerr on October 2, 1964, the second day of the police-car "capture." In a statement following his speech to the American Council on Education in San Francisco, he said:

> The rules in question are the historic policy of the University of California and they are as follows:
>
> (1) Solicitation of political funds on campus is not permitted. The law of the State of California does not permit such solicitation on state property.
>
> (2) Recruitment of pickets on University property is prohibited.

> (3) We do not permit meetings on campus for planning social and political action against the surrounding community.[9]

The reference to a state "law" against soliciting political funds on state property was reported in the press, and was widely taken to mean that the President believed a state statute of this character applied to University campuses, in addition to the Constitutional provision. No specific state "law" was mentioned by the President, however.*

The invocation of state law was not without its repercussions on the campus. On October 1, after a conference with President Kerr, Charles Powell, President of the Associated Students of the University of California, Berkeley (ASUC), issued a statement that said:

> . . . The prohibition on the solicitation of funds and membership on campus for partisan issues is not a ruling of the Chancellor or of President Clark Kerr.
>
> It is, in fact, a state law. Therefore, the only rational and proper action at this point is to seek changes in the law. Those opportunities are not here on the campus--but in the houses of the State Legislature. . . . I ask that you not oppose the Administration--the Administration can do nothing to meet the demands being made.[10]

At the October 13 meeting of the ASUC Senate, a committee-introduced "Rationale for Student Political Action" stated that the "state law" argument was the only one which presented a basis for restrictions on campus politics that "seems to carry some weight." In debate on the motion, these words were stricken, after discussion of their consistency with the rest of the resolution, plus debate on the legislative purposes of political-solicitation laws and their possible application to the University.[11]

---

* California's Government Code Section 19731 requires every "State officer or employee" to "prohibit the entry into any place under his control occupied for any purpose of the Government of the State, of any person for the purpose of therein making, collecting, receiving, or giving notice of any political assessment, subscription, or contribution." The section appears in a Part of the Code referring to "State Civil Service." In another Part, Government Code Section 3201 makes a similar requirement of officers and employees of any "local agency," including a "county, city, city and county, political subdivision, district, or municipal corporation"; this has been held not to apply to school districts. Neither provision has been applied, so far as is known presently, to a university or college. See also annotation at 94 A. L. R. 2d 1274-1293, on "non-school" uses of school property in general.

The November, 1964, issue of the Northern California ACLU News stated:

> The Administration has circulated stories to the press that in engaging in political activities the students were violating a state law and reference was made to a section of the Government Code. The fact is that this law has no application either to employees of the University of California or the students. The stories were so much dust in people's eyes but unfortunately some newspapermen relied upon them.[12]

Members of the FSM argued in campus discussions that if the University is "public" property for some purposes it is "public" for others, and that freedoms of speech and advocacy allowed in most public places should be allowed on the University campus as well.

In succeeding weeks, however, little serious discussion was heard of the application of such general laws concerning state or public property to the premises of the constitutionally-created University, and the topic gradually disappeared as a subject of contention.

Issues for Further Study

Out of this complex of events and opinions, many issues might be raised for further study. Here are a few of the legal questions that remain unresolved: How have the courts construed constitutional and statutory provisions such as those in question here, in applying them to universities and colleges? Are there legally tenable reasons for applying such provisions to student political expression and activity on university campuses? What considerations cast doubt on such an interpretation? If such provisions were enforced strictly against university "political" activity, are there customary actions of university officials which might also be prescribed?

Other questions are not specifically legal, but carry important implications for policy and practice in university governance. For example, it might be asked: What provision should be made for university administrators' ready access to professional advice on the legal status of their institutions' policies? What obligations should be assumed by university officials to ascertain accurately the legal status of basic policy determinations, especially those that are being protested? What other groups in the university community have obligations--and opportunities--to help assure that official legal interpretations are accurate?

Some of these issues are pertinent to later sections of the report, as will be seen.

Avoiding On-Campus Action by "Outside" Police

Another result of the FSM controversy at Berkeley was a new look within the academic community at the role of campus police forces, and those of surrounding civil jurisdictions, in the regulation of conduct on the campus. Soon after its organization, the Free Speech Movement demanded that only the courts regulate the content of political speech and activity on the campus. In turn, FSM members expressed their readiness to accept, as citizens, the on-campus regulation of speech by civil authorities--within Federal Constitutional guarantees.[13] This led a number of otherwise sympathetic persons to argue against "opening the campus" to increased--and perhaps unsympathetic--surveillance and arrests by metropolitan police. Visions were raised of raids by city police on campus political discussions, and new thought was given to the University's status as a "sanctuary" from the actions of civil authorities.

No Legal Sanctuary

It became apparent that a number of academic people had tacitly assumed that activities on the University campus were immune from regulation by the authorities and police forces of the City of Berkeley and the County of Alameda--if not, indeed, of the State of California. This assumption proved to be quite untrue.

On January 6, 1965, the press reported conclusions of the Legal Advisory Committee (LAC) to the Committee on Academic Freedom of the Berkeley faculty. Among other things, the LAC report stated flatly that "the gates of the university afford no sanctuary from the enforcement of criminal law."[14] It thus apparently laid to rest the idea that the campus is a "sanctuary," at least in law.

By early December, in fact, outside police had twice been called en masse to the Berkeley campus to arrest student demonstrators. Police from Oakland, Berkeley, and Alameda County were asked by campus officials to help University police officers on October 2, when the "captured" police car was released; however, no arrests were made, as a result of a student-administration agreement (see chronology). Police officers from those jurisdictions were requested by California Governor Edmund G. Brown to help the State Highway Patrol arrest "students and others who may be in violation of the law"[15] at Sproul Hall on December 3. On that occasion, 768 persons were arrested and charged variously with trespass in a public building, resisting arrest, and failure to disperse from an unlawful assembly. These circumstances evoked strong and divided sentiments in members of the University faculty. Several hundred faculty members formally protested to Governor Brown the presence of police on the campus, and the manner of the arrests. Many others saw the arrests as a vindication of conscientious law enforcement in the face of extreme provocation by students bent on "anarchy."

No official University statement during the fall of 1964 indicated that increased "outside" police action on campus would be an undesirable result of granting FSM demands. However, some University officials admit privately that the issue of "who is in charge" on the campus loomed large in the minds of many administrators and Regents faced with the student protests. President Kerr several times stated publicly that the University was "responsible" for maintaining "law and order" on the campus.[16] On December 3, he indicated that Governor Brown, who "has the final responsibility for the maintenance of law and order in California," had "decided that the unlawful sit-in in Sproul Hall must be ended immediately," and had ordered State and County police officers to enter the campus. At that time President Kerr also said:

> The FSM and its leaders from the start declared the police would have to haul them out. They are now finding that, in their efforts to escape the gentle discipline of the University, they have thrown themselves into the arms of the less understanding discipline of the community at large. They have asked that they be subject only to external law and external courts. They are learning that the community is no more sympathetic with anarchy than the University they so violently condemn.[17]

In some discussions during the fall's events, critics of the FSM charged them with wanting to "Latin Americanize" the University of California. In most Latin American countries, it was said, police are forbidden by law to pursue student revolutionaries within the university walls; consequently, armed insurrections are mounted from those sanctuaries, with machine guns actually hidden in academic buildings until the time for their use. The spectre of such problems at Berkeley was raised explicitly in some administrative discussions of the FSM demands. It was widely believed that the protestors, if granted immunity from University regulation of speech, would also demand that the University act to reduce on-campus action by outside police as well. In any case, University control of the conditions of "law and order" on the campus apparently was thought to be highly desirable on other grounds as well.

Some FSM leaders did, in fact, express admiration for the Latin American universities' reputed freedom from police surveillance. And protest leaders openly criticized the University and Governor Brown for condoning and ordering arrest of the December 3 sit-in demonstrators, despite the open "ultimatum" to the University which preceded the "direct action" at Sproul Hall.[18] However, the FSM did not publicly call for both relaxed University restrictions on expression and protection from on-campus action by the civil authorities. As noted above, FSM statements explicitly contemplated acceptance of the risks and safeguards of civil authority on the campus as well as off.

Campus Police "Jurisdiction"

The issue of "outside" police action against on-campus speech and expression is part of a broader set of issues, which concern the regulatory relations of University and civil authorities generally. These issues are too complex for full discussion here; however, those most relevant for our central concern may be sketched briefly.

The University campus at Berkeley maintains a small "University of California Police Department" of about 40 officers. Members of the "UCPD" are "peace officers," authorized to "exercise their powers of authority" on University property and within a mile radius surrounding it.[19] As a practical matter, their duties involve much traffic regulation and the protection of University lives and property from the thefts, burglaries, or muggings which threaten any modern urban enclave. They are also involved on occasion, however, in enforcement of University rules of student conduct--such as the maintenance of general "order" on campus, and the above-mentioned restrictions on political activity.

Recent years have seen a number of relatively minor disputes over University police officers' handling of student-conduct regulation at Berkeley. For example, students have challenged the manner and purpose of police requests for student identification from those using the Student Union, during times when many non-student visitors are present on the campus.[20] But by all odds the most dramatic incident of this type occurred when a University police officer dragged Mario Savio bodily away from the microphone at the close of the Greek Theater meeting on December 7, 1964, while University administrative officials looked on in apparent confusion and at least some dismay. This incident led many faculty members to question the discretion allowed University police in "keeping order" among students, and to examine anew the whole problem of making law-enforcement activity compatible with the purposes of an academic community.

Since the University campus is within the limits of the City of Berkeley, it is generally assumed that certain normal protective activities are owed the University by the City police department; others, such as the assignment of additional officers to traffic duty for sports events, are negotiated from time to time as questions are raised or circumstances change. Apprehension of felony suspects on the campus, and investigation of serious crimes involving campus personnel, are carried out as matters of course. In the general supervision of campus affairs, however, a rough and informal division of labor has been practiced by the University and City police departments. University police officers generally supervise the main campus, and enforcement of City laws there is subject to their discretion and interpretation. City police officers observing apparent violations of City ordinances on the campus (such as the display of the "obscene" sign by John Thomson on the Student Union steps) usually report these to the University police, who make any necessary arrests or investigations. If City officers must enter the campus on more serious matters, it is usual practice to make contact with, and to be accompanied by, a University officer. Informal arrangements for "special" City police handling of University students caught in "pranks" off the campus also are said--though not officially--to be general practice, depending on the circumstances. Thus the interplay of University and off-campus police responsibility is both formal and informal, both ambiguous and varying.

Issues for Further Study

Within this broad area, certain questions with special pertinence for our present interest have been raised more sharply by the events of 1964-65. The legal questions include these: How clear and binding is the University police officer's legal obligation to enforce city, county, state, and federal laws on the campus? What circumstances, and whose initiative, can bring outside police forces into the University's campus? When outside police are on the campus, what rules and circumstances determine the scope of their authority in regulating conduct of University members?

Questions of policy and practice arise here also: What are the benefits and burdens, especially for freedom of on-campus expression, in a university's having its own trained and uniformed police force? What values would be endangered if law-enforcement on University campuses were largely taken over by outside authorities? What should be the roles of University police officers, as against those of administrators and faculty members, in regulating student conduct on the large campus?

Although stated here in relation to the University of California at Berkeley, such questions have obvious application to other universities and colleges as well.

Avoiding Judicial Regulation of Activities on the Campus

During the first few days of protests by student political organizations following the receipt of Dean Katherine Towle's letter on September 16, 1964, a variety of objections was made to the prohibition of political speech and activity on the Bancroft-Telegraph strip. Students argued that the ruling had been arbitrarily imposed; that it was politically motivated; that the traffic problems mentioned could be solved without the prohibition; that students' "duty to society" demanded they be able to use the area politically; that the University was more restrictive of speech than was the City of Berkeley, whose property the strip had been widely supposed to be. By September 28, however, the students had decided to challenge the University's restrictions on political speech and activity generally, not merely their application to the area at Bancroft and Telegraph. And, following October 1, the students' contentions gradually took on a legal coloration, although "moral" and "political" objections were not abandoned. Legal objections were based on two separable propositions: first, that the specific restrictions on advocacy, organization, and fund-raising set out in the existing University Polices were unconstitutional; second, that the University should avoid attempting to regulate the content of on-campus speech at all, leaving that task to the courts.

University responses to the FSM's challenges were also varied, as we have suggested. Two major types of response, however, were related directly to the effects of court regulation of University activities. First, it was argued that the University need not abdicate all regulation of campus political expression and activity to the courts, since some University regulation is permissible under the Federal Constitution. Second, it was said by some that court regulation of on-campus activity should be minimized rather than encouraged, to avoid the dangers of judicial "intrusion" into matters best handled within the "academic community."

As a result, legal controversy on the campus revolved around the question: What University regulation of expression is constitutional? Always in the background, however, were other questions: What would be the effect of court regulation on University activity? How can court regulation of University affairs be avoided? These issues will be discussed in order.

Constitutionality of the 1964 Restrictions

As was mentioned above, on October 1, 1964, an official of the American Civil Liberties Union of Northern California publicly stated his opinion that the University was mistaken in its apparent reliance on the California State Constitution to justify restrictions on student political expression and activity. On October 26, ACLU officials announced their intention to challenge the disputed regulations in court, under the

Constitution of the United States, if the matter of students' political "rights" on campus was not settled otherwise. In early November, the Berkeley-Albany Chapter of the ACLU presented members of the Committee on Campus Political Activity with a short statement entitled The Campus and the Constitution. This leaflet discussed both the relation of campus restrictions to University political neutrality under the State Constitution, and the Federal constitutionality of regulations on the "substantive content," the "form," and the "effects on behavior" of speech. The leaflet concluded:

> We believe that regulation of the form of speech or political activity which effectively precludes the students from using the campus, and requires that they use only off-campus facilities for their public speech or political activity, would be unconstitutionally burdensome on their opportunity to engage in those activities in light of any justifying interests of the State and alternatives for protecting its interest. Solicitation of funds in support of views taken in public speech and political activity is often vital in effectuating such speech or activity. Thus, we believe such solicitation cannot be entirely prohibited on the campus if it meets appropriate requirements of honesty and bona fides.[21]

During the October-November discussions on the campus, FSM spokesmen challenged the University rules as both unconstitutional and "illegitimate" on "political" or moral grounds. The FSM Position statement, which appeared on December 7, 1964, echoed these views.[22]

It is not generally known what the views of the University administration and Regents are, concerning the constitutionality of the rules on political activity which were in effect during the early fall of 1964. All official discussions of such matters were held in "executive sessions" (closed to the press and public) of Regental and University-wide administrative councils. Minutes of these sessions are not publicly available. Public statements by President Kerr and Chancellor Strong during September, October, and early November seem to rely on the nature of the University as a "public trust," which is administered by the Regents for "educational," not "political," purposes. While a legal argument of fiduciary obligation may have been intended, it seems more likely than an assertion of Regental discretion and moral obligation was implied.[23]

The CCPA faculty report. During the October-November meetings of the Committee on Campus Political Activity (CCPA), administration representatives suggested that the advocacy of lawful (but not unlawful) off-campus action be permitted as on-campus political expression. The FSM representatives refused to accept this solution and, after the November 7 meeting ended amid talk of an "impasse," FSM members on November 9 again began violating the existing regulations against fund-solicitation at campus tables. The CCPA was dissolved by the President and Chancellor immediately upon this "abrogation" of the October 2 agreement by the FSM.

The faculty members who had been CCPA members submitted a "report" based on their participation in the discussions. This report did not make reference to the constitutionality of the rules under protest, but suggested the following general principle:

> The advocacy of ideas and acts which is constitutionally protected off the campus should be protected on the campus.

It also suggested, among other things, that:

> The on-campus advocacy, organization or planning of political or social action by groups or individuals may be subject to discipline where (a) this conduct directly results in judicially-found violations of California or Federal criminal law, and (b) the group or individual can fairly be held responsible for such violations under prevailing legal principles of accountability. . . . [Emphasis in original.][24]

This position of the faculty group was formulated as an attempt to find a common ground acceptable to the FSM and administration representatives. The language concerning disciplinary action for advocacy of off-campus illegality was, in general, consistent with that which had been urged by administration representatives during meetings of the CCPA.[25] President Kerr, in a November 12 public statement on the faculty group's report, said:

> I have met with this group and its report reflects, in part, our discussions. . . .
>
> . . . the University is devoted to the First and Fourteenth Amendments to the Constitution . . . But the detailed application of these Amendments throughout our nation has been the subject of controversy for over a century and a half. Their application to University policy may continue to be subject to controversy. If so, there are legal methods for resolving such controversy, if discussion fails to do so.[26]

The Regents' action. At its meeting on November 20, 1964, the Board of Regents approved the recommendation of President Kerr and Chancellor Strong that certain areas of the campus be opened up for use:

> . . . by students and staff for planning, implementing or raising funds or recruiting participants for lawful off-campus action, not for unlawful off-campus action.[27]

This action was taken without a public statement of the reasons behind it. However, as the minutes of the November 20 Board meeting indicate:

> Regent Roth noted that the above action was based, in part, on the report of the Faculty Study Committee chaired by Professor Williams [i.e., the CCPA faculty group]. . . .[28]

University Vice President and General Counsel Thomas J. Cunningham, in a June, 1965, speech delivered before the National Association of College and University Attorneys, defended in general the University's right to regulate constitutionally protected speech and assembly by means of reasonable regulations designed to serve valid University interests. However, he passed in one paragraph over the constitutionality of the specific prohibitions protested by the FSM, indicating merely that the November 20 action of the Regents had met the students' basic objections.[29]

"Doubtful legal enforceability." In other words, no public record has been found that any University administrator or other official representative has defended the Federal constitutionality of the University regulations banning political advocacy, recruitment, and fund-raising generally, which were sought to be enforced by the letter of September 14, 1964.

In a February, 1965, Message to Alumni, President Kerr stated:

> The courts have been changing their interpretations of the law quite substantially in recent years. The University has liberalized its rules in many ways in recent years also--sufficiently so to be given the Alexander Meiklejohn Award for contributions to academic freedom by the American Association of University Professors in the spring of 1964. But, by the fall of 1964, certain of the University's rules had become of doubtful legal enforceability. The University did not permit on-campus recruitment of participants for political action off campus or on-campus organization of such action. Stanford University, in May, 1964, after reviewing the changing character of the law and of student interests had quietly revised its rules.[30]

Constitutionality of Content-Regulation Generally

While the specific rules involved on September 14, 1964, were changed by November 20, the general question of University regulations on the content of speech and expression proved more complex. For that reason, it is examined here in some detail.

Advocacy of unlawful action. As history knows so well, the November 20 action of the Regents was not acceptable to the FSM. A major impasse reached during the CCPA meetings had concerned the distinction between lawful and unlawful action advocated on the campus, and this distinction was preserved in the Regents' resolution. The chief administration representative in the CCPA, University Dean Frank Kidner, had insisted during those meetings that, if the University revised its rules to allow on-campus advocacy of political and social action, it must:

> . . . disavow, publicly if you will, any intention to employ University of California facilities, or the facilities of any recognized groups of the University of California, to mount unlawful action. . . .[31]

Dean Kidner suggested the CCPA adopt the following statement:

> If acts unlawful under California or federal law directly result from advocacy, organization, or planning on the campus, the students and organizations involved may be subject to such disciplinary action as is appropriate and conditioned upon a fair hearing as to the appropriateness of the action taken.[32]

Dean Kidner indicated he could not say that the University would in all cases wait until a court had found the off-campus acts in question illegal before it disciplined students for their on-campus advocacy. Professor of Law Sanford Kadish, a member of the CCPA faculty group, stated his informal opinion that the University could regulate speech that is or constitutionally could be made a crime (such as advocacy of a crime), since in any such case the speech in question would not itself be constitutionally protected. He thought such action by the University would be reasonable as a means "to maintain itself as an organization."[33]

The FSM representatives in the CCPA argued that:

> . . . the only body competent in all senses of the word to judge upon the legality or illegality of acts in the area of First Amendment rights is the civil authorities. . . .[34]

The illegality of both the off-campus acts advocated and the on-campus advocacy of them must be determined by a court, the FSM leaders insisted. They urged that no one can tell, until a court has ruled on it, whether some or all of a civil-rights demonstration will be declared illegal. They also suggested that students who advocated off-campus civil-rights demonstrations later found to involve illegality might be disciplined under the proposed ruling, even though they had not themselves been convicted of illegality. The University, they argued, was asking to retain a threat of discipline over a broad and uncertain area including precisely those political and social activities which FSM leaders felt were most important--namely, demonstrations for the civil rights and economic opportunities of minorities. But on-campus advocacy of such actions could not constitutionally be punished by the University unless it had been judicially found illegal, they argued.[35] (Later, they contended also that in such a case the University discipline would constitute "double jeopardy.") No agreement on these points was reached within the CCPA before its dissolution.

During this period the Berkeley-Albany ACLU's statement on The Campus and the Constitution also appeared. It said that any State agency regulation which "depends on the substantive content of the speech or activity alone" is prohibited by the First and Fourteenth Amendments to the U. S. Constitution. Reasonable regulations on the "form" of speech might be promulgated, it continued, but these "must never be used as a mask for attempts to regulate content." Finally:

> Regulation over the real or potential effects of speech or political activity on behavior may be constitutional. Language inciting a crowd to an immediate riot may be punished as a crime. However any regulation of speech which turns entirely on the "lawful" or "unlawful" character of off-campus conduct advocated on the campus would probably constitute an unconstitutional regulation of content. The U. S. Supreme Court has made clear that advocacy of unlawful conduct cannot constitutionally be punished so long as the advocacy will not clearly and presently cause some substantial evil that is itself illegal. Protection against any significant public dangers which might result from on-campus public speech or political activity is adequately afforded by applicable California law.[36]

Subsequent administrative declarations failed to satisfy the University's critics that its position was constitutional or necessary. After the Regents' November 20 approval of on-campus organizing "for lawful off-campus action, not for unlawful off-campus action," President Kerr was asked at a news conference who would determine the legality or illegality of the action advocated. He was quoted as saying:

> In the usual case, you'd wait for the courts to decide. It would then go to the Faculty Committee on Student Conduct.[37]

In a statement read for him at an FSM rally on November 22, 1964, Chancellor Strong said:

> Activities of students in disobedience of the laws of the State and community are punishable in their courts. The University maintains jurisdiction over violations of its rules including those which prohibit use of University facilities for planning and recruiting for actions found to be unlawful by the courts. There will be no prior determination or double jeopardy in matters

> of political and social activities organized on the campus by students and staff. The demand of the FSM that the University permit the mounting of unlawful action on the campus without any penalty by the University cannot and will not be granted.[38]

Chancellor Strong noted that detailed regulations were to be drawn up by University attorney. But a number of issues between the FSM and the University administration remained unresolved.

On December 8, 1964, after the climactic sit-in and arrests of December 2 and 3, the Berkeley Division of the University Academic Senate voted by 824-115 for resolutions which urged, in part:

> 2. That the time, place, and manner of conducting political activity on the campus shall be subject to reasonable regulations to prevent interference with the normal functions of the University; . . .
>
> 3. That the content of speech or advocacy should not be restricted by the University. Off-campus political activities shall not be subject to University regulation. On-campus advocacy or organization of such activities shall be subject only to such limitations as may be imposed under Section 2 . . . .[39]

The faculty's action was understood generally on the campus as a thoroughgoing acceptance of the FSM's position. The FSM accepted it as such and announced its objectives had been won, except for the defense of persons arrested December 3. The University Regents declined to accept the Berkeley faculty's formulation, but at their December 18 meeting they passed resolutions which included the statement that:

> . . . The policies of the Regents do not contemplate that advocacy or content of speech shall be restricted beyond the purview of the First and Fourteenth Amendments to the Constitution.[40]

On the same day, the new Emergency Executive Committee of the Berkeley faculty announced:

> Our extensive discussions with members of the Board of Regents and with President Kerr, plus the actions of the Regents today, assure that the University will not restrict the content of speech and advocacy on the campus. . . .
>
> It is now clear that the advocacy of ideas and acts, which is constitutionally protected off the campus, will be protected on the campus.[41]

At this point, FSM leaders declared the Regents' action unsatisfactory, although they did not specify their objections in detail. Because of the admitted ambiguity in the application of the First and Fourteenth Amendments to University regulations, many observers felt that the Emergency Executive Committee's statement had inaccurately portrayed the implications of the Regents' action.

New views of the legal criteria. On January 6, 1965, the press carried summaries of a new statement on the legal issues involved: the report of three University law teachers, members of a Legal Advisory Committee (LAC) to the Academic Freedom Committee of the Berkeley faculty. Dated December 14, 1964, the LAC report stated that some University regulation of speech probably would be found constitutional, if narrowly and carefully drafted to serve "special regulatory interests" of the University. Regulations "based upon the content or substance of expression" are "very vulnerable to constitutional challenge." But not all content of speech is constitutionally protected, the LAC said. For example:

> . . . One can hardly conspire to commit a crime, or solicit or abet others to crime, or incite a mob to crime, or defame another, or be obscene, without the use of language. But the mere fact that language is involved, even centrally, does not necessarily invoke the constitutional protections of the First Amendment. . . .
>
> [However], the courts have consistently required that any [content-oriented] regulation differentiate sharply and clearly between that which is permitted and that which is prohibited. . . . This is largely because unclear or vague regulations are very likely to deter or inhibit the person who wants to engage in speech that is protected, but who also wants to avoid any possible liability if his judgment is unsound. . . .
>
> . . . We caution against regulation of speech content [because of] the extreme difficulty of delineation. . . . Second, there is . . . the absence in university disciplinary proceedings of those institutional procedural safeguards that are available to the criminal defendant in a court of law. . . .
>
> [For lack of such safeguards, the] United States Supreme Court has denied to administrative tribunals and other non-judicial bodies certain powers to regulate the content of expression that have been given to the courts. . . .
>
> [Moreover, the University's] non-academic interests . . . are adequately protected without content-oriented regulations on the campus . . . because the general laws that make

> certain dangerous or highly offensive behavior "illegal" apply just as much on the campus as they do off the campus; the gates of the university afford no sanctuary from the enforcement of criminal law.
>
> . . . [We] believe that content-oriented regulations of speech are unnecessary as well as constitutionally unwise.[42]

The LAC report appeared to lend authoritative support for the view that there should be no University regulation of the content of speech. A somewhat different note was struck by Professor of Law David Louisell in a speech delivered to the Berkeley Academic Senate on January 12, 1965. He said in part:

> . . . [W]hether any regulation we may suggest will be constitutional, is largely a function of the deliberateness, fairness, and care with which we write it. We would be misled if we permitted abstract constitutional speculation to keep us from doing what we, as educators, think is wise and fair. . . .
>
> . . . I think it apparent that by reason of the nature of a university community it can have some restrictions even in the area of speech that would be invalid if applied by the government to people generally. A foreign-language professor could prohibit the reading by students of an English translation of an assigned book. Such a prohibition might even transcend the concept of time, place, and manner.
>
> . . . The courts do not insist that university disciplinary proceedings duplicate in all respects judicial proceedings; they do insist, increasingly so, and I am most grateful for it, on fundamental fairness. . . .
>
> . . . the courts place special trust in institutions of higher learning; . . . For us to erect a standard to which honest and wise educators can repair, is our best guarantee that we will be within the law, and that the courts will sustain us.[43]

At this point, then, a range of overlapping but differing legal opinions had been given: Professor Kadish had appeared to defend the University's legal right, as reasonably related to a general need to "maintain itself as an organization," to regulate at least some speech which could constitutionally be made illegal by a state or local government. This would, for example, presumably include advocacy of the commission of a "crime"--or, apparently, advocacy of illegality of any sort. The ACLU chapter had contended that advocacy of "unlawful" conduct in general would not constitute the "clear and present" causing of such "substantial evil" that the University could constitutionally forbid it. The Legal Advisory

Committee's report had said the University can constitutionally regulate even the content of speech, but only under special conditions: the restrictions must be reasonably "necessary" to serve a "special regulatory interest" of the University: they must be carefully and narrowly drafted so as to avoid going beyond the service of that interest; they must distinguish clearly between the kinds of speech permitted and those prohibited; they must be enforced only with the kind of "procedural safeguards" appropriate to the regulation of speech content and to the seriousness of the penalties invoked.

Professor Louisell had also urged that the University might regulate the content of speech, in a fashion appropriate to the University's "nature." He had not specified how far into extracurricular, "political" speech he felt such regulation might constitutionally go, but he had warned against "blanket abdication" of content-regulation generally. He had argued for the kind of careful drafting of regulations discussed by the LAC, but had emphasized different criteria: What educators thought "wise and fair," and "best for the University," would be the best tests of constitutionality, he thought--not, apparently, strict necessity, clear and present danger, or complete clarity as to the conduct proscribed. Finally, Professor Louisell had suggested that the character of the University community, rather than the penalties invoked or the fact that speech content was being regulated, would be taken by courts as the decisive test of adequate procedural safeguards.

The FSM had argued as follows: (1) By broadly prohibiting on-campus advocacy of illegality, the University would insufficiently identify the kinds of conduct to be sanctioned later, and would exercise "prior restraint" over civil-rights activities important to student leaders. (2) Because of the alleged political pressures on its administration, the University could not guarantee the fundamental fairness appropriate to any restrictions on speech--at least not without additional procedural safeguards.[44] By implication, the FSM had asserted students' rights to continue on-campus organization and advocacy of picketing, sit-ins, and other civil-rights demonstration techniques which *probably would* involve what they consider only technical illegality, justified by a worthy cause.[45]

A summary statement entitled "The Position of the Free Speech Movement on Speech and Political Activity" appeared on December 7, 1964. It said in part:

> . . . [I]n order to focus attention on a serious injustice and to bring pressure to bear for its correction, civil-rights workers sometimes employ tactics which result in violation of law. Without passing on the propriety of such acts, the Free Speech Movement insists that the question whether their *advocacy* is legal or illegal must be left to the courts, which are

institutionally independent of the shifting pressures of the community. Moreover, the standard that the Chancellor is free to apply is only one of "responsibility" of the act of advocacy for the act advocated, which is far more inclusive and vague than the "clear and present danger" test. . . .

. . . Even if complete mutual trust existed between the Administration and the student body . . . [t]he points in controversy . . . are of such a delicate and complex nature that even the courts have not built up adequate precedents. Certainly, then, a nonjudicial body should be considered incompetent in this area.

On the other hand, the students' position . . . does not in any way imply the creation of a haven for illegal activity on the campus. On the contrary, it involves just the opposite of this--the removal of any special protection the University may now afford, as well as any extra-legal punishment. . . .

. . . The Free Speech Movement recognizes the necessity for regulations ensuring that political activity and speech do not interfere with the normal educational functions of the University. Rallies must not be held so as to disturb classes, block traffic, damage University property, conflict with other scheduled public meetings or rallies, etc. Such . . . regulations must be carefully tailored to protect or promote these State interests without unduly burdening the opportunity to speak, hear, or engage in political activity on the campus.

. . . For example, the Administration has until recently designated a place removed from the area of normal student traffic as the sole "Hyde Park area," thus seriously hampering access to listeners. As the local ACLU has pointed out,

> a denial of certain avenues of such access (such as the open areas of the campus) with the claim that there are others, which though perhaps not as desirable are nonetheless available, will not avoid violation of the First Amendment unless the government entity . . . can demonstrate that there are no available alternative means of achieving its purposes, and that the purposes in question are so necessary as to be, in the language of the [U.S Supreme] Court, "compelling."[46]

Aside from the question of constitutionality--by now clearly not a simple one--University officials now were faced also with explicit decisions of policy: with the law in doubt, should the University risk error on the side of too much regulation or too little? On December 18, 1964, the Board of Regents responded by creating a Special Committee to Review University Policies (the so-called Meyer Committee), which it directed to consider the whole matter of how to achieve the "maximum freedom on campus consistent with individual and group responsibility."[47] Before that committee could report, however, the regulation of on-campus speech and expression was to face two more tests: the "obscenity" and "Spider" episodes.

The four-letter word. In early March, 1965, when John Thomson was arrested for displaying an allegedly obscene four-letter word on a sign near the Student Union steps, student rallies, individual protests, and fund-raising efforts followed quickly. Nine persons (including three students) who used the now-famous word in public were also arrested. (They were subsequently tried and sentenced in Berkeley-Albany Municipal Court; their cases are now on appeal.) Four University students were subjected to disciplinary action for what the University's press release called "their roles in March obscenity incidents on the University of California's Berkeley campus." Three of these students were "suspended" until September, 1965; one was "dismissed" from the University.[48]

When first notified of the disciplinary action against them, the four students were charged with "conduct unbecoming a student," a violation of University regulations. After some uncertainty about what committee should hear the case, it was referred to an ad hoc committee of faculty members (the Whinnery Committee) appointed by Acting Chancellor Martin Meyerson with Academic Senate advice. The students and their attorneys charged improper hearing procedures[49] and refused full cooperation with the Committee. In its final report, the Committee found that:

> . . . [T]he actions of the students did constitute violations of the University's Regulation on Student Conduct and Discipline. Whether motivated by social protest or not, the members agreed that the loud use and prominent display of the words in question in a public place such as the Sproul Student Union Plaza is a violation of the regulation.[50]

The Committee did not state which regulation had been violated. Neither did it agree with the students' charges that it had slighted "due process" in its hearings. Rather, the Committee denied the workability and the necessity, in a faculty hearing of this type, of some of the procedures demanded. The suspended students announced they were seeking funds to appeal their penalties to the courts.

During this period, Chancellor Meyerson was sent a copy of the magazine Spider, edited locally by a group of students and others. It contained an article in which the four students charged with having spoken obscenities defended their actions. The article, its headline, and other pieces in the publication, used the forbidden four-letter word. Chancellor Meyerson immediately asked the Dean of Students to request that the Spider staff stop selling the magazine on campus; the next day he issued an order banning both Spider and a student-written satirical play called For Unlawful Carnal Knowledge. On March 23, 1965, the Daily Californian carried an open letter from Chancellor Meyerson to "Fellow Faculty and Students," which included the following:

> When I issued the request and orders, I made no determination that the material was legally obscene. (The determination of legal obscenity is one which gives lawyers and courts great difficulty.) I used the discretion, which it is my responsibility to do. Discretion is necessary because at a university we must operate under general rules of conduct.
>
> . . . The Regents and the Berkeley Division of the Academic Senate have reaffirmed that speech and expression on the campus shall be protected to the fullest extent of the protection afforded by the Constitution. That is not the issue. It is a matter of the appropriate time, place and manner of expression on a university campus that is the issue. These publications may, perhaps, be sold in bookstores which offer for sale many books, magazines, and pamphlets. It does not follow that these publications are suitable for public sale or distribution in a plaza of our University. In the same way, some language that may be appropriate in some private settings is not by that token suitable for public expression in a plaza on our campus. The University's scholarly interests and commitments make it virtually impossible for faculty committees to conduct their inquiries into disciplinary charges and political activity in the manner of a criminal court. This would involve a nearly full-time preoccupation of the faculty and students involved, not to mention the excessive costs. At the same time, the proceedings before the Committee on Student Political Activity should be consistent with the elements of due process.[51]

Later, after extensive consultation with students and faculty, Chancellor Meyerson authorized the sale of Spider from tables in Sproul Hall Plaza if it could be shown "to serve the purposes of a student organization." He rejected a portion of the faculty committee's advice and continued his ban on the play, however, saying that it had a cover "designed to affront the passerby, who has no choice but to observe it."[52]

During these episodes, the reactions of students involved in the FSM were varied. FSM leader Arthur Goldberg publicly took the position that the utterances of Thomson and others, and the articles in Spider, were "political" in nature--that they were criticisms of prevalent social hypocrisy, and of society's domination by polite, middle-class manners to the exclusion of the earthy, honest speech of the economically deprived groups and the ethnic minorities. Mario Savio asserted that proscribing such utterances amounted to creating "laws on manners." He urged that, on principle, society should avoid basing laws simply on "what happens to bug some people." He also urged vigorous protests against the alleged lack of "due process" in University hearings. But he conceded that the utterances involved were far less important than those at stake during the previous autumn, and suggested that insistence on the right to speak such words in public provided convenient weapons to the "enemies" of more basic political freedoms.[53] Some students urged that the faculty's December 8 stand against regulation of content was being purposefully eroded, and demanded a strong stand on the issue.* Some faculty members argued that the "obscene" expressions, while distasteful to many, should be taken in their context as genuine protests against widespread "hypocrisy" in the adult world. A professor of English pointed out that current popular literature, films, and mass advertising may be seen as implying that few clear standards of social morality are prevalent concerning sex, violence, and cupidity. Students should not be greatly blamed if they attacked the contrast of polite usage with these public facts, he said, or if they tried to test the limits of the socially permissible in these areas. Others suggested the original incident should better have been ignored. Most faculty members, however, apparently felt such considerations did not excuse the students' behavior. On March 12, 1965, the Berkeley Academic Senate overwhelmingly approved a resolution presented by its Emergency Executive Committee, which (among other things) "strongly endorsed" instituting administrative disciplinary proceedings "against the alleged offenders under due process." The resolution also stated the faculty joined "with the President, the Acting Chancellor, and the student body in condemning the willful flaunting of obscenity on this campus by a handful of students as a travesty of the legitimate uses of free speech."[54]

Public morality and useless offensiveness. A retrospective look at these events in their legal setting was taken in an article written for the May, 1965, California Monthly by law professors Sanford Kadish and Robert M. O'Neil (the former having been a CCPA participant, the latter a member of the Legal Advisory Committee). These writers began by distinguishing between:

---

* Both the report of the Meyer Committee to the Regents and the April 23, 1965, opinion of University Vice President and General Counsel Cunningham later took the position that some regulation of speech content is perfectly proper, making reference to the "obscenity" episodes as examples.

> . . . two principal kinds of expression which can be constitutionally controlled. First there is the speech which can be prohibited because it threatens imminent harm to social interests of overriding importance. . . . Second, there is the speech which can be prohibited because it doesn't even qualify as the kind of speech the Constitution is designed to shelter. It is, in the [U. S. Supreme] Court's language, unprotected. The four-letter-word case belongs generally in this category.
>
> . . . What, then, is obscenity? The courts have wrestled for years with this problem of definition, and have yet to settle on a satisfactory standard. What they have said, essentially, is that obscene material . . . is that which, when judged as a whole, "appeals predominantly to the prurient interest" of the average reader or observer. In addition, it must substantially transcend "customary limits of candor in describing such matters." To put the test another way, the material must be "utterly without redeeming social importance" before it can be declared obscene. . . .
>
> Increasingly the courts have come around to a test that draws the line at "hard-core pornography." This concept, like that of "prurient interest," all but defies definition. The best one can do is to concur with the pragmatic view expressed last summer by one member of the U. S. Supreme Court: "Perhaps I could never succeed in intelligently defining the term. But I know it when I see it." The courts have thus avoided pronouncement of general principles and have preferred to deal with obscenity on a strictly case-by-case basis. . . .
>
> . . . So it is with utterance of vulgar and offensive little words. There is no attempt to express a thought or idea, no assertion of a principle or belief of any sort. Much like an indecent gesture, the four-letter language used out of context may be legally treated in nonspeech terms even though words have been spoken. . . .
>
> . . . We assume the draftsmen and supporters of [the Academic Senate's December 8] resolution understood the term "speech" in its constitutional sense--that is, to bar the University from abridging expression which the Constitution protects. . . . [T]hroughout the debates of the fall there was no claim for protection of expression devoid of idea or serious purpose.

> . . . But . . . why does the law seek to restrict the distribution of obscene material? . . . What underlies the obscenity laws . . . are moral, social and even theological judgments rather than legal considerations. We restrict and regulate for the purpose of preventing deeply offensive or disgusting experiences, and perhaps in part to preserve a certain level of public morality, rather than to protect the government or political structure.
>
> . . . To say that one may read "Tropic of Cancer" at home is not to say . . . that he . . . must be permitted to read it aloud on a busy street corner. Freedom of speech and of the press are never absolute, and the scope of their protections obviously depends upon the occasion.
>
> . . . You have a right to get your message to the audience, but not at any time and place, or at any volume. If the means of communication make the message offensive or dangerous to many who do not wish to hear it, then you have abused your First Amendment rights. . . .
>
> . . . The audience, too, has rights that must be protected by those who have the power to regulate. If that can be done without restricting anyone's constitutional rights to speak and to publish, or to read for his own pleasure, then an intelligent balance is much to be preferred to an uncritical insistence upon absolutes.[55]

The Kadish-O'Neil analysis spoke revealingly on the issue of "obscenity" as "unprotected" speech. By implication, it supported the University's legal right to regulate "offensive or disgusting" expression which is uttered "out of context," so as to be "utterly without redeeming social importance." The authors declined to discuss the validity of the University regulations under which the students were disciplined for their utterances of "obscenity," saying that the question was then "pending before our criminal courts." They did not comment on the procedural safeguards appropriate to University hearings concerning restrictions on speech. The authors also did not offer opinions on the question whether specific public utterances by students (or non-students) would be found by a court to be "obscene." Finally, they did not directly address the students' contention that --especially in an area of such doubt as to legality or illegality, and where no serious harm to the "government or political structure" is threatened --a university should not attempt to arbitrate the propriety of speech that is asserted to be of social significance. These issues remain largely unresolved in the campus dialogue to date.

New University of California policies. On April 23, 1965, the Special Committee to Review University Policies (Meyer Committee) presented a draft of proposed "University-wide Regulations Relating to Student Conduct, Student Organizations, and Use of University Facilities." The draft regulations set forth as their Section II the following "General Standard of Student Conduct":

> Students enrolling in the University assume an obligation to conduct themselves in a manner compatible with the University's function as an educational institution. For that purpose students are required to observe generally accepted standards of conduct. Obstruction of University teaching, research, administration or other activities, indecent conduct or speech, and failure to comply with requests of University officials in the performance of their duties are examples of conduct which would contravene this standard.[56]

The standard suggested was intended to apply to all forms of student conduct and activity. In its Section III, on "Speech and Political Activity," the Meyer Committee draft began with the "General Principle" that: "Students have the right of free expression and advocacy."

University General Counsel Thomas Cunningham, in an opinion to the Regents dated April 23, 1965, commented on the draft:

> . . . "Students have the right of free expression and advocacy," subject to the foregoing general standard of student conduct.
>
> . . . University regulations will be upheld as valid by the courts even though they may have an effect upon constitutional liberties such as speech, assembly, press or religion, provided the regulations are reasonable and serve a valid interest of the University. This legal principle is established by an unbroken line of legal authority. . . .
>
> . . . In summary, it is my opinion that Sections II and III [quoted above] . . . if adopted, would be constitutional and legally valid, since these providions are reasonable regulations designed to serve valid and substantial interests of the University in maintaining good order and requiring students to adhere to generally accepted standards of conduct.[57]

During April and early May of 1965, comments on the proposed regulations were asked for and received by the Meyer Committee from many parts of the University. On May 21, the Committee presented the Regents with a revised draft of the regulations and reported that, "in recognition of the President's authority with respect to the matters dealt with," the Committee had referred the draft to the President. In June President Kerr published new policies based on the draft, which became effective July 1, 1965. These policies retained the general student "right to free expression and advocacy," subject to a revised "Standard of Conduct":

> Students enrolling in the University assume an obligation to conduct themselves in a manner compatible with the University's function as an educational institution. Students shall refrain from conduct which significantly interferes with University teaching, research, administration, or the University's subsidiary responsibilities, or which endangers the health or safety of members of the University community, or of visitors to the campus, and from disorderly conduct on University premises or at University related events.[58]

Thus the final form of the published regulations avoids reference to "generally accepted standards of conduct" and depends directly on criteria associated with "the University's function as an educational institution."

Both the early and final drafts of the new University policies contemplated "time, place, and manner" regulations on speech and advocacy, to be established by the Chancellors of the individual campuses. As published by the President, the new Policies provide:

> Such regulations shall require orderly conduct, non-interference with University functions or activities, and identification of sponsoring groups or individuals, and shall provide for one or more open discussion areas. Campus regulations shall provide reasonable protection to persons on campus against practices which would make them involuntary audiences.[59]

It is worth noting that the President's new Policies do not specifically adopt the Berkeley faculty's recommendation that there be no University regulation of the content of expression. As we have seen, the University's General Counsel and some Regents disagree that content-regulation should be avoided, or that only "time, place, and manner" restrictions were involved in the "obscenity" cases.[60] Moreover, in view of the issuance of the new Policies, the Regents rescinded their action of November 20, 1964, which specifically approved on-campus "planning, implementing, or raising funds recruiting participants for lawful off-campus action."[61] The more general standards of the new Policies now supersede this formulation. Thus, barring any specific statement on the matter in the campus regulations finally approved at Berkeley, it appears that the problem of content-regulation is to be dealt with only where necessary, in each case as it arises.

The Scope of Judicial Review

Soon after the FSM began protesting University regulations on political expression by "direct action," it was urged that a test case in court would be a more appropriate way of bringing about any justified change. As protests mounted, some administrative officers privately urged that the University encourage such a case in order to settle the constitutional question and "get the monkey off our backs." Consideration of this possibility rapidly came to involve not only the probable outcome of such a case, but also the current scope of judicial review over University disciplinary regulations. Some observers, including faculty members generally in sympathy with the FSM's goal of maximum freedom of political activity on the campus, began to worry about court surveillance over the substance of University purposes and functions. Their concern was reinforced by recent indications that there may be a trend to more general court scrutiny of the justifications for University actions in disciplinary cases.

For many years, courts in this country have refused to look deeply into most college and university disciplinary actions, saying that the institution acts generally "*in loco parentis*," i.e., in the place of the parent, and that its officials must accordingly be allowed extremely broad discretion. However, recent cases (notably two involving student expulsions from colleges in southern states, for activity on behalf of racial integration there),[62] have suggested that some modifications of this principle may be in the offing. This in turn may lead, some faculty members fear, to courts' substantive review and delimitation of universities' functions in society, in the process of determining the "appropriateness" of specific kinds of student conduct. This possibility is viewed with concern by many academic men, who feel that courts should not "intrude" into matters better left to the discretion of those inside the universities.

Professor Louisell, in his January 14, 1965, speech to the faculty, indicated he did not fear the possibility, provided that universities exercise their traditional disciplinary role thoughtfully and carefully:

> . . . Carefully doing what our own experience and informed judgment honestly dictates is our best practical guarantee not only of wisdom but also of legality.
>
> I think it fair to say that no institutions are treated with higher regard and respect by the courts than colleges and universities. This is true generally, and particularly so with [constitutionally] autonomous universities such as ours. . . .[63]

Other faculty members took up the task of stating an alternative basis for judicial deferral of judgment in university matters, to replace the "parental" principle. For example, a group called the Faculty Forum in March, 1965, issued a "draft" statement which argued that a university has "an inherent right to define for all who seek or accept membership in it, faculty and students alike, standards of conduct appropriate in terms of its purposes and functions." Therefore:

> In the normal course, in all matters pertaining to University regulation clearly defined in terms of its central functions there is no appellate authority beyond the Chancellor and the Regents. In doubtful or marginal cases the ultimate safeguard of the fairness of University procedures lies in the civil courts. Nonetheless, the University retains the right to enforce its regulations until the disputed issue has been finally adjudicated. . . . Neither as a question of principle nor as a practical matter, can the University be administered essentially in the civil courts, any more than it can be required to develop within itself a professional and full-time judiciary on the model of the civil courts.[64]

The FSM maintained that a trend to more intensive court review is long overdue. A major premise of the FSM position was that the discretion of University officials could not be exercised without bias, particularly in matters of political activity, because of external pressures on the institution. More generally, however, most FSM members subscribed readily to the view expressed by student leaders in other contexts: They believe that "parental" supervision over the activities of university students--many of them already aged 21 or over, some matured by experience in moral and political arenas such as the racial cauldron of the south--is a rank anachronism and must be discarded. If these students felt any concern over court restrictions on broader University functions in the service of student political freedoms, it received little emphasis in the circumstances.

How to Avoid the Courts

To some administrators and faculty members it seemed clear that the appropriate University response to the FSM challenge was to reaffirm the necessity of the existing regulations, discipline offenders, and challenge the protestors to take action in court. For others, accommodation to student demands for freer political activity seemed indicated--but with the proviso that the University must retain the right to discipline students for on-campus encouragement of illegality. If such a compromise could be reached, they felt, a healing of the University's wounds might be accomplished without a court test.

For still others in the University, the FSM position of avoiding all restrictions on content seemed more promising. They argued that a university has no business taking initiative to restrict speech content in the first place, and that court review of its regulations and their functions could be avoided by abandoning such disciplinary action before it reached a court test on constitutional grounds. In addition, it was said, the University might thereby avoid the solution to tangled problems concerning what is and is not permissible expression, which have plagued courts and legislative bodies since our Constitution was created. This, substantially, was the position of the Legal Advisory Committee to the Academic Freedom Committee of the Berkeley faculty. It was at least partly on the basis of such arguments that the December 8 resolutions of the Academic Senate were adopted.

A substantial group of faculty members, however, continued uneasy with this solution, and fearful that the University's avoidance of restrictions on speech content would not avoid court intervention in its affairs. Some feared that future cases involving expression would arise from which the University would find it effectively impossible to stand aside. This concern was given voice by Professor Louisell:

> . . . We should be careful not wholly to give up all potential jurisdiction on abstract grounds lest we make wise handling of future cases difficult or impossible. I fear that such blanket abdication of responsibility historically assumed by universities will tend to undermine our autonomy by inviting increased intervention of the civil authorities.[65]

It is not clear whether events in the remainder of the 1964-65 academic year at Berkeley set the stage for a test of these views. As indicated above, when Acting Chancellor Meyerson banned the publication Spider from the campus, he explicitly avoided trying to determine its legal status as "obscenity." Rather, he said, he acted as "an educator," determining what was necessary "to maintain the conditions on the campus best conducive to teaching and research." He also disclaimed restricting the content of expression, saying that only "the appropriate time, place, and manner of expression on a university campus" were at issue.[66] Apparently, similar bases underlay the Acting Chancellor's action in disciplining four students for "their roles in March obscenity incidents." However, the students in both situations have argued that the content of their expression was being restricted, and that the University's action is unconstitutional regulation because it goes beyond the restrictions on "obscenity" set by the courts. The students who were disciplined have said they are appealing the University's action to the courts if they can raise sufficient funds. If this action should proceed, it may turn on procedural issues, such as the definiteness of the regulation under which the discipline was imposed. However, it may be that a court test is in the offing on the constitutionality of at least one type of content-regulation by the University.

Issues for Further Study

Legal issues. A number of legal issues are involved in the above discussion. Here are some that invite further study: What is the constitutionality of university regulations forbidding on-campus advocacy, fund-raising, and recruitment of members for off-campus political or social action? May a university constitutionally penalize on-campus advocacy which "directly results in" off-campus action later found by a court to have been illegal? Is such advocacy illegal in itself? If students were disciplined for such advocacy, would an issue of "double jeopardy" be raised?

More generally: Under what circumstances, if any, may a university restrict the content of on-campus speech or expression? How have the courts distinguished the regulation of content from restrictions on time, place, and manner? What distinctions are made in First Amendment cases between "speech," other types of "expression," and the various forms of "action"? Is a purported aim of "political" expression or of "social protest" relevant in determining whether expression is constitutionally protected? What are the legal criteria for determining substantial social or literary significance of expression? Is speech or expression on a university campus legally entitled to the same constitutional protection that it enjoys off campus? If not, what are the differences?

It has been said that the scope of judicial review concerning university disciplinary action involving on-campus expression is changing. What is the scope of such review at present? If it is changing, does more intensive review seem likely in the future? In what types of cases will this likely occur? Does court review in such cases extend only to procedural matters, or is the substance of alleged rule-violations sometimes considered by the courts? Have changes in universities' institutional characteristics, or in students' age, maturity and social responsibilities, been considered legally relevant?

Finally, it has been said that the courts' interpretations of the law relevant to university rules have changed "quite substantially" in recent years. What are the grounds for this statement? What specific changes have occurred, and how have they affected the constitutionality of university rules such as those at issue here?

Issues of policy. Parallelling many of these legal issues are questions of policy which must be answered for each university. For example: Should university officials place some restrictions on the content of students' extracurricular expression, if they may do so constitutionally? How should such restrictions, if any, be formulated and justified? Should a university take an official, public stand against the use of its facilities in connection with any illegal acts, or should it attempt to remain neutral on that issue?

If a university's officials are in doubt about the constitutionality of specific campus restrictions on expression, should university policies tend to err on the side of more or of less restrictiveness? Should universities minimize restrictions on expression generally, to avoid administrative handling of issues which the courts themselves have found difficult? Should university rules and their enforcement be tailored to university purposes and circumstances, with only incidental regard to legal criteria? Should university regulations concerning on-campus expression be broad and general, or should a detailed code of offenses and penalties be specified?

Should universities attempt to avoid court review of their actions? Should a university encourage court tests of its regulations and procedures in some circumstances? Should university administrators and/or faculty members always be considered more competent than the courts to determine what expression is acceptable on a university campus?

Finally, who should be responsible for initiatives to assure that a university's rules serve its various purposes well, and do not violate constitutional imperatives? What provision should be made for the availability and use of expert legal advice in formulating and applying university policies concerning speech and expression?

Related issues of law and policy are discussed in the next part of the report.

Protection of University Interests and Functions

In the early autumn of 1964, University of California officials generally answered student protests against restrictive political-activity rules by referring to the State Constitution's requirement of political independence, and to the University's charter as a "public trust" for "educational" purposes. For example, President Kerr said on September 25:

> The University is an educational institution that has been given to the Regents as a trust to administer for educational reasons, and not to be used for direct political action. It wouldn't be proper. It is not right to use the University as a basis from which people organize and undertake direct action in the surrounding community.[67]

During the fall, as we have seen, the FSM and others increasingly challenged the legal necessity or enforceability of the University rules concerning the content of political expression. The campus discussion focused generally on legal issues, on the merits of the students' "civil disobedience," on charges of administrative "arbitrariness," and on the CCPA negotiations concerning possible new policies. By December 8, however, when the resolutions of the Berkeley Academic Senate were passed, some faculty members had articulated the importance of University "ideals" as a basis for avoiding all restrictions on the content of speech.[68] As the end of 1964 approached, efforts began in some groups to state anew the bases of University restrictions on expression, in terms of the legitimate "interests," "purposes," or "functions" of the institution.

For example, explicit emphasis on the University's legal right to protect its "interests" was included in the December 14 opinion of the Legal Advisory Committee:

> A state university undoubtedly has certain general regulatory powers over the campus--powers equivalent to those of other branches of the government that operate public buildings . . .
>
> In addition the university possesses certain special regulatory interests of a sort which require protection only in the academic setting. . . .[69]

Professor Louisell on January 12 agreed, and went on to emphasize the "nature of a university community" as a basis for broad legal powers to regulate on-campus conduct, including speech restrictions which "might even transcend the concept of time, place, and manner." Vice President Cunningham's legal opinion of April 23, 1965, similarly emphasized quite broadly what were there called "valid and substantial interests of the

University in maintaining good order and requiring students to adhere to generally accepted standards of conduct."

The February Draft Statement of the Faculty Forum took still another tack. Moving away from the legal or governmental reference to "regulatory interests," the Forum Statement began its declaration of "general principles" as follows:

> 1. The university is not a polity; it is a community established for specific and limited purposes, and founded on voluntary association. As such, it must be governed by norms and usages appropriate to its purposes and functions and, in this measure, different from those which govern the civil polity within which it exists.[70]

Over the year, therefore, the discussion in one sense came full circle, returning to dependence on general statements about the distinctive functions of the University. Apparently, there exists on the Berkeley campus little general agreement about the nature and importance of those functions, or about how the different functions should be accommodated when they conflict. However, the recent conflicts greatly stimulated discussion at Berkeley of what a university's proper functions are, and how the ongoing activities of the campus are related to them. Any general reassessment of these matters--especially a public one--is rare and important in today's large university. Thus it may be well to examine more closely some of the different dormulations suggested at Berkeley during 1964-65.

Organizational Interests of the University

The most general--and potentially the most controversial--areas of asserted university "interest" are those that arise because of its basic character as a unit of social organization.[71] Any social enterprise requires some minimum conditions of stability, continuity, and order. But if the interest in "order" is asserted in general terms, it can be made to justify whatever restrictions on human initiative the speaker wishes--just as "freedom," unqualified, rejects all accountability to others. Much was heard on the Berkeley campus last year about "law and order" on the one hand, and "freedom" on the other; to reach useful discussion, it was necessary to become more specific.

Quiet, safety, and traffic control. The Legal Advisory Committee's report was somewhat more specific. It began its discussion of University "regulatory interests" by asserting:

> A state university undoubtedly has certain general regulatory powers over the campus--powers equivalent to those of

> other branches of the government that operate public buildings (such as hospitals and libraries) where a degree of quiet and order are essential to the work of the institution. Thus the university may regulate activities on the campus in order to control the flow of traffic, insure the safety of those who use university facilities, prevent excessive noise, and protect the university community against fire, theft and other physical dangers.[72]

By the use of such examples, the Committee helped to put content into this "general" regulatory interest. And, at such a level, only marginal disputes seemed likely. The FSM Position statement, for example, had already stated that time, place, and manner regulations must avoid disrupting classes, prevent damage to University property, etc.[73] But a more basic problem is hidden by such terms as "excessive noise": all such conditions may be enforced so as to serve particular substantive purposes or activities of the University, and to disserve others. The voice amplification "necessary" for a speaker's "access to listeners" may be "excessive" for workers in a nearby office, for students in a lecture hall, for those who do not wish to hear political speeches as they walk home from class--or for those offended by the words a speaker uses. Thus it is necessary to have some agreement on the relative importance, and the consequent scheduling or curtailment, or activities in the University for even the most basic conditions of "order." Unresolved issues remain in this area.

Protection against fraud and vice. Somewhat similar questions are raised by the Legal Advisory Committee's statement of other "interests" that a university may protect:

> In pursuit of its special non-academic interests the university just as clearly has the power to protect students against financial fraud, the use of and exposure to narcotics, alcohol, gambling and the like on the campus.[74]

Here, doubtless, lie many potential problems. Alcohol and gambling are of ambiguous moral status in this country; each is differently regulated in different legal jurisdictions, and is understood to have acceptance in many sectors of the population. Also, students are among the leaders in calling for a reevaluation of both law and social attitudes toward some narcotics. Thus the legitimacy of specific university restrictions against these things, in the interests of specially "protecting" students from them beyond the scope of the law, would be seriously questioned by many. A large number of students considers attempts at such "protection" to be anachronistic, hypocritical, or worse.

"Enhancing" educational purposes. Beyond such specific "regulatory interests," however, some official statements seemed to assert that universities have legitimate concern for more general conditions of discipline, decorum and mutual courtesy on the campus. It was in such terms that President Kerr justified University action against students involved in the "obscenity" incidents:

> Academic institutions have traditionally set standards of moral and ethical behavior conducive to their principles. The University must have the right to augment civil law with rules that will protect and enhance educational purposes.[75]

A similar emphasis was apparent in Chancellor Meyerson's criticism of the incidents:

> . . . The four-letter word signs and utterances had a significance beyond their shock impact; they also symbolized intolerance for the rights and feelings of others. . . .[76]

These references were echoed later by Professors Kadish and O'Neil in their discussion of constitutionally "unprotected speech." They made it clear that the courts have refused to protect useless and inflammatory "fighting words," and suggested that speakers may be forbidden at some point to force "deeply offensive or disgusting experiences" on others, or to violate "a certain level of public morality."[77] But their discussion did not focus on any University "interest" in creating its own regulations in such matters, going beyond those of the general community.

Chancellor Meyerson was relatively explicit on this matter in his March 23 statement on the Spider case:

> . . . Any organized society requires some regulation of the time, place, and manner of speaking and the distribution of printed matter. A university campus requires it no less. But a campus is not simply a microcosm of society. A university has functions which may demand higher standards of conduct and work than prevail in the general community.[78]

These remarks were confined to considerations of "time, place, and manner." However, student critics pointed out that the Spider issue was not one involving academic standards of validity, but alleged offense to some persons' sensibilities. In this context, the reference to "higher" standards for a university community seemed to them to imply the University's "functions" required standards of inoffensiveness in time, place, and manner of speech that are not thought necessary in the community at large. Regulations based on such broad and ambiguous justifications, they argued, opened the door to content-restrictions, and had been at the heart of student objections in the previous autumn's controversy.

An even more explicit statement of a university "interest" in general decorum was included in the April 23, 1965, opinion of University General Counsel Thomas Cunningham. The opinion quoted with emphasis from court cases declaring the right and duty of colleges and universities to "maintain discipline and an atmosphere conducive to learning," and to see to "the upkeep of the necessary tone and standards of behavior in a body of students in a college."[79] It argued that the disciplinary action against the four students involved in the "obscenity" episodes, while admittedly "a direct restriction on free expression, . . . is not only reasonable but required in the interests of maintaining good order and acceptable standards of personal conduct on the campus." The opinion concluded, as we have seen, with the view that the Meyer Committee's proposed criterion of "generally accepted standards of conduct" embodied a "valid and substantial interest" of the University.[80]

Objection was made to the Meyer Committee criterion by some in the University, on the ground that "generally accepted standards" would not always be appropriate to a university community. The President's Policies of July 1, 1965, require, instead, student conduct that is "compatible with the University's function as an educational institution."[81] How such general requirements will be applied on specific campuses remains to be seen.*

---

* Levine suggests it may be argued that universities have a valid legal interest in maintaining "autonomy" of outside authorities, and that this interest might be held to support a "reasonable" disciplinary action--although "contrary policy may be of superior weight" with a court. Op. cit., p. 1393. Attempts to avoid court action and political pressure by regulating expression are discussed in other sections of this report. However, it is worth noting here that no attempt was made to justify a legal interest on this basis in the Berkeley controversy. By contrast, appeals were made to the desirability of maintaining University "independence," and the practical necessity of regulating expression to avoid "inviting increased intervention of the civil authorities." See, e.g., Chancellor Strong's speech of September 28, 1964, and Professor Louisell's statement of January 12, 1965; the latter is reprinted in Lipset and Wolin, op. cit., on pp. 280-283. Similarly, some of the early court cases granting a college or university discretion to act in loco parentis turned upon educational institutions' supposed function of training students in "good moral character." But no public assertion of such a function or interest in the modern secular university has been found in the Berkeley controversy. The closest approach to such an interest, perhaps, was in the purported function of "protecting" students from narcotics and alcohol, which was suggested by the Legal Advisory Committee report but was not at issue in the immediate disputes.

Organized Teaching and Research

If teaching and research are taken as the major formal, organized activities of the University, there was and is fairly general verbal agreement that political expression and activitiy on the campus should not be allowed to interfere seriously with them. Again, the FSM's Position statement indicated that rallies must not "disturb classes, block traffic, . . . conflict with other scheduled public meetings or rallies, etc.," and that regulations of the "form" (not the content) of expression were necessary to assure this.[82] The Legal Advisory Committee report in December, 1964, specified that cheating, plagiarism, abuse of library privileges, and, in general, "speech content in the classroom and on the examination paper" are subject to constitutional regulation designed to preserve the "academic interests" of the state university. Professor Louisell on January 12, 1965, argued that some University speech-restrictions were legitimate, such as a foreign-language professor's forbidding the reading of English translations on an assigned book. These statements brought no strong objections from the student protestors.

The Faculty Forum's Draft Statement argued that:

> . . . [T]he University's right to regulate the manner of political activity means more than the control of traffic or noise; it means also the right to insure that legitimate political activity remains extra-curricular, and that it does not dominate, distort, or distract from the central academic functions of the University or govern the way in which these are provided for and administered.[83]

Chancellor Meyerson, in his speech to the Berkeley faculty on March 18, 1965, took a similar position:

> . . . Free political discussion should, however, be encouraged on university campuses because it furthers the educational process, not because it may contribute to social reform. Indeed, all activities other than scholarship and learning which go on on a campus must be viewed as secondary to the main university objectives: this applies as much to baseball as to politics, as much to fraternities as to the ASUC. Should any secondary activity tend to receive more than secondary attention, the university is not only justified by obligated to place that activity in proper perspective, possibly through some kind of a rationing device.[84]

What these statements mean in practice is not entirely clear. Their emphasis on the "academic functions" as "central" probably would receive general agreement on campus. This agreement, however, would mask serious disagreement about the kinds of "rationing" of political activity which is justified by the primacy of academic functions. Some persons now assert that the University should allow student political activity on the campus--but only within certain bounds. While unwilling to assert a general University interest in "acceptable conduct"--or in a complete prohibition of student politics, these persons, including many faculty members, believe ways must be found to "de-politicize" campus life, in the interests of scholarship.

Politics: education or distraction? Thus many faculty members believe that a combination of circumstances tends to distract students--and consequently others in the university--from proper concentration on formal academic pursuits. Some argue that a pervasive tendency to test the limits of all authority, over a broad range of important and unimportant issues, is endemic among adolescents in this culture. Vigorous political activity on the campus creates public controversy which, it is said, consumes energies and patience of both students and faculty, which might otherwise be spent on "academic" inquiry. Political controversy also requires University administrators to spend large portions of their time dealing with complaints from members of the State government and other external publics, instead of ministering to the needs of the University's teaching and research programs. It is pointed out that many "non-students" participate regularly in campus political activities, helping to keep the level of such activities high and further diverting students' attention from their studies.

This combination of circumstances, some faculty members believe, justifies a general prohibition of on-campus political activity, such as that protested by the FSM in 1964. Others strongly disagree, arguing that only example, precept, and a minimizing of restrictive rules can be expected to produce the proper balance of student attention to course-work and extracurricular pursuits of all kinds. Some have suggested that students simply be "kept busier" with heavier course-loads, so that less time will be available to them for extra-curricular activities. Still others apparently feel that a set of rules can and must be found within which to regulate political expression on the campus, hopefully without prejudice to any particular political viewpoint.

Student protestors and their supporters in 1964-65 generally denied that campus political activity necessarily detracts from formal academic pursuits. Instead, they pointed out, personal involvement in political action during a period of academic study can stimulate students to useful insights, and helps to illuminate the complex relations between theory and practice in social and humanistic disciplines. If students can maintain their academic standing in course work while participating in normal campus political action, they argued, that should be the only criterion of their right to continue both activities. They denied vigorously that students are under-worked academically; educational-reform groups within the FSM strongly urged that the normal student course-load be reduced from the present five courses, so that more time and thought could be spent on each subject.

The view that student political activities are an asset to students' education received early support from the established student government. In its resolution of October 13, 1964, the ASUC Senate urged that "political activity be allowed and encouraged on our campus, insofar as it is legal," in part because "there is educational value in confronting students with the opportunity to implement their political and social convictions with action."[85] On September 25, 1964, President Kerr had stated his view of the relation between political action and education:

> I don't think you have to have action to have intellectual opportunity. Their actions--collecting money and picketing--aren't high intellectual activity . . . These actions are not necessary for the intellectual development of the students. If that were so, why teach history? We can't live in ancient Greece . . .[86]

Concerning distraction and general disturbance of the campus, the FSM argued that it was the "necessary" protest over unreasonable administrative restrictions which had rent the campus so violently--not the normal political activity at Bancroft and Telegraph, or even the previous campus-organized civil rights protests. Protest leaders readily agreed that "non-students" help to keep student political activities going, for example, by doing much work for campus political organizations. But, they argued, most of these people were recently enrolled as University students, some of whom had interrupted their studies temporarily for civil-rights work. Many "non-students" are University employees, are spouses of enrolled students, or otherwise consider themselves members of an extended University "community." In any event, the FSM leaders argued, the worth or distraction of on-campus political expression should not be judged by the presence or absence of "non-students." Characterizing such persons as "outside agitators," or ascribing student protests to adolescent rebellion, the FSM contended, was only "enlightened Red-baiting": a thinly veiled *ad hominem* attack, serving to avoid the substance of the protestors' claims. In an *ad hominem* attack of their own, the protestors charged that most University professors are induced to political passivity by being coopted into the "system" of government research contracts and comfortable social positions which many political activists seek to change.

A rule against "significant interference." In its proposals for new University *Policies* governing student conduct, the Meyer Committee of the Regents included a general restriction based on the University's "educational" functions:

> Obstruction of University teaching, research, administration or other activities, . . . and failure to comply with requests

> of University officials in the performance of their duties are examples of conduct which would contravene this standard.[87]

The President's Policies of July 1, 1965, state a similar principle in slightly different words:

> Students shall refrain from conduct which significantly interferes with University teaching, research, administration, or the University's subsidiary responsibilities. . .[88]

The "obstruction" reference was broadly taken as aimed primarily at the on-campus "civil disobedience" of University officials and rules, to which FSM members resorted when convinced they could not otherwise achieve their aims. The official University publication of the Meyer Committee's proposed regulations quoted "Regent Meyer and President Kerr" as saying: "Nothing in these regulations is directed at off-campus political or social action."[89] But some observers suggest that this statement, and the breadth of the language used in the regulations, leave open many of the questions concerning on-campus advocacy of off-campus action which occupied the University during much of late 1964. For example, they ask, what are the boundaries of "significant" interference with University "administration"? May restrictions on the content of extracurricular expression still be justified, as the Spider ban was justified, by reference to maintaining "the conditions on the campus best conducive to teaching and research"? Clearly, there is no general agreement among students, faculty, administration, and Regents on the meaning of such terms. To leave room for diverse regulations on the campuses, within broad University-wide policies, the President's directives were formulated in general and abstract terms. Their implementation by campus regulations, and their application to particular cases, remain largely to be worked out.

Assuring "Academic" Standards of Extracurricular Discussion and Inquiry

A number of statements about University functions have rested, more or less implicitly, on the idea that the University has a responsibility--outside as well as inside the classroom--to regulate the course of on-campus discussions so that they meet the standards of an "academic" institution. For example, the section on "Academic Freedom" in the booklet of 1963 University Policies (which concern the conduct of students and student organizations) says:

> [The University's] obligation is to see that the conditions under which questions are examined are those which give play to intellect rather than to passion. Essentially, the freedom of a university is the freedom of competent persons

> in the classroom. In order to protect this freedom, the University assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda. It, therefore, takes great care in the appointment of its teachers; it must take corresponding care with respect to others who wish to speak in its name.[90]

For some years, this statement had been used as a basis for the general exclusion of controversial speakers from the campus. After 1958, President Kerr took leadership in a liberalization of this policy which resulted in the "Open Forum," allowing invitation of Communists and others to speak on the campus under special conditions.[91]

Facts vs. opinions. President Kerr had continued in his public statements, however, to emphasize the University's concern for students' gaining "perspective" on both "facts" and "opinions," its dedication to "the reasoned argument as against the simplistic slogan," and so on.[92] In his remarks before the American Council on Education in San Francisco on October 2, 1964, President Kerr said:

> . . . [T]here is more opportunity to hear and to express opinions today on the Berkeley campus than students in earlier generations enjoyed. But, as members of a university community, students and faculty members have a correspondingly greater responsibility to distinguish between opinion and fact. It is intellectually exciting to express opinions; but it is even more important to intellectual growth to develop the habit of learning the facts that relate to opinion.[93]

Substantially the same language had been used in the President's speech at an all-University meeting in Berkeley on November 2, 1962.

These remarks are consistent with the posture which President Kerr maintained throughout 1964-65: That the University was enforcing rules of conduct which should have been self-enforced by individual students, in fulfillment of the "responsibility" which must accompany the "freedom" allowed University students under his administration.[94] At the same time, the remarks illustrate the view under discussion here: that University standards of intellectual discipline must be observed outside as well as inside the classroom, by students and faculty alike.

The view that student political activists were irresponsibly and intemperately advocating political action on "opinion" rather than "facts" seems to have been generally shared by administrators in the early fall. As early as September 21, 1964, a special assistant to Berkeley's Vice Chancellor for Student Affairs was quoted as saying that the University restrictions on political expression were designed to discourage "advocacy of action without thought."[95]

Thought and involvement. By contrast, the leaders of the FSM refused to concede that they acted without thought, or advocated that anyone else do so. They admitted to passionate concern with moral principles, and to impatience with University academics who sit so long deliberating about uncertainties in the "facts" that they never take a moral stand on social issues at all. A major tenet of the student activists' view was criticism of "fink liberals," whom they saw as rationalizing endlessly and drily in an abstract search for "verified" truth about human affairs, while blatant injustices surround them. These same student activists tend to demand that knowledge be personally relevant, and useable in understanding the problems with which individuals are faced in their daily lives. Involvement, rather than "academic" detachment, is their style when approaching learning.[96] And they deny that this handicaps them, at least in the areas of social action on which their major moral concerns are focused.

In addition, they argue that other and equally important social values of the university are endangered by attempts to enforce "academic" standards of political expression in the extracurricular sphere. Among these values is the free play of ideas which stimulates intellectual creativity.

The University as a Market Place for Ideas

On September 16, when student organizations received notice of the new enforcement policy for the Bancroft-Telegraph strip, former SLATE chairman Arthur Goldberg called publicly for new efforts to "make this campus a market place for ideas." His avowed aim was to allow exposure of "new creative political solutions to the problems that every American realizes are facing this society in the mid-Sixties."[97]

Some faculty members later made a similar, but more general, point: They urged that any official restraints upon what may be said in a university tend to breed habits of intellectual conformity, and the unimaginative acceptance of currently popular doctrines. This argument was included in a brief presented by 139 faculty members to the Berkeley-Albany Municipal Court on behalf of the Sproul Hall sit-in defendants:

> . . . The very activity of education, for student and teacher alike, is the free exercise of open minds. Whenever in the pursuit of knowledge speech is guarded and minds are sealed, the educational dialogue deteriorates into monologue, arguable hypotheses harden into dogma, and the will to stimulate active inquiry yields to the demand for passive acceptance.

> . . . In the community of scholars which embraces teachers and students alike, the paramount need is to create and preserve a climate conducive to the growth of critical inquiry and independent thought. On its negative side, that need requires the exclusion of all irrelevant pressures and restraints which would interrupt the dialogue or qualify its practice. Affirmatively, it demands the provision of opportunities and incentives for the members of the community to enrich and enliven that joint activity. Such opportunities are not limited to the classroom, with its somewhat formal procedures and methods of instruction. The entire campus is but an extended classroom, replete at every turn with provocations to thought and prods to conversation. Anyone who has been a student knows the corollary and complementary values to formal education of such occasions as speeches, debates, group discussions, even coffee klatches and bullsessions. It follows that these occasions and opportunities should be not merely tolerated but assiduously cultivated.[98]

In late April, 1965, this general view was restated by a faculty group that included prominent members of the 139 who had submitted the brief:

> The perennial ideal of a university as a community of scholars and students can be stated in many ways, but the unequivocal condition, not only of greatness, but for achieving a university worthy of the name, is freedom. Academic freedom, which includes minimally the right to teach, to inquire, and to communicate without fear of reprisal, presupposes something less tangible, something like a condition of openness. Openness is the essential characteristic of a community whose primary activity is intellectual exploration. Freedom and openness are vital to a community whose members, faculty and students alike, are constantly striving for intellectual and spiritual growth. They are particularly vital to the students who are undergoing the ordeal of maturity while being introduced to the demanding inheritance of the world's knowledge. Students, teachers, and university all require a condition of openness and freedom so that they may challenge, learn, mature, and stretch to the utmost their capacities for creation and contribution.[99]

Dissent and conspiracy. Official University views on this point are illuminated by a reading of President Clark Kerr's statements before the ACE on October 2, 1964. In addition to his statements concerning respect for law and order, and the above-quoted remarks about facts and opinions, President Kerr reaffirmed:

> . . . that the non-conformist (as contrasted with the conspirator) today, as in ages past, also serves humanity and that the university is one of his havens; and that when freedom of thought and expression has died on a university campus, it will be dead everywhere.
>
> Freedom of thought and expression has not died at the University of California. Students have more opportunity to hear and to express opinions than did any earlier student generation.
>
> As in all the affairs of men, freedom must be matched by responsibility if freedom is to survive. And the University has a responsibility to insure that the search for truth will never be subverted internally. For this precise reason, the University of California has refused to employ persons whose commitments or obligations to the Communist Party, or to any other organization, prejudice impartial scholarship and the free pursuit of truth. That has been the policy of the Regents and the Academic Senate for many years. It is our policy today. It will continue to be our policy.[100]

It is not the intention here to assert that these statements indicate President Kerr saw the budding FSM protests, specifically, as inspired mainly by conspirators and subversives. Whether that is so has been much debated elsewhere without settlement, and it is not the point here. The statements do seem clearly to indicate, in the October 2 context, that the President saw the danger of some form of "subversion" in the search for truth as an important limitation on the University's role as a "market place for ideas." Like the 1944 "Academic Freedom" statement (which was incorporated in the 1963 University Policies booklet), his words strongly suggest apprehension over the "exploiting" of the University as a "platform for propaganda" by those who are not seeking truth at all, but are attempting to convert the unwary to a preconceived political creed. Other official statements of 1964-65 support the view that such apprehension was an important element in the University's determination to restrict on-campus political advocacy in general.[101]

The University as a Springboard for Social Action

Beyond the problem of on-campus "propaganda," however, University officials maintained that their main concern was to limit action rather than speech. Speaking to an all-campus meeting on September 28, 1964, Chancellor Strong emphasized the speech/action distinction. After reviewing the Open Forum policy which allows speakers of all persuasions to be heard on campus, he said:

Consistent with University policy regarding use of University facilities, no one is permitted on campus to use these facilities to mount social and political action directed to the surrounding community. President Kerr, on June 12, 1961, issued the following statement of principles:

1. Freedom to speak and to hear is maintained for students and faculty members.
2. Subversion and other illegal activities are not tolerated; and we will not employ a Communist.
3. Law and order are maintained on the campus.
4. A balanced program of speakers and ideas is presented.
5. No exploitation of the name of the University is allowed.
6. No student may be compelled to join an organization which engages in social or political action.
7. No efforts at conversion and solicitation of members by political or religious groups are permitted on campus.

I have received from the ASUC Senate the text of a motion passed by that body on September 22 requesting freedom 1) to solicit political party membership, 2) to mount political and social action on the campus, 3) to solicit funds on campus for such action, and 4) to receive funds to aid projects not directly concerned with an authorized activity of the University. This petition has received the attention of the President and The Regents of the University. University facilities are not to be used for any of these four purposes. Any student or group of students seeking to recruit members for social or political action, or to solicit funds for such action, is free to do so off-campus, but is prohibited from doing so on-campus.

. . . [W]hen a student goes off-campus to participate in some social or political action, he does so on his own responsibility as a citizen. He has no right, acting as a citizen, to involve the University, either by using its name or by using any of its facilities to further such an action. . . .[102]

Involving the University in action. Chancellor Strong was stating the official position of the Kerr administration: Any on-campus advocacy, organization, or fund-raising by students for off-campus political causes constitutes a "use" of University "facilities" that would "involve the University as an institution in the controversial issues of the day."[103]

As noted above, the Berkeley-Albany Chapter of the ACLU took issue with this view.[104] The administration's position also was challenged by an October 13, 1964, resolution of the ASUC Senate:

> . . . [T]he University would become committed to the activities of no particular student group, should it permit all such groups equal opportunity to conduct their activity on its campus.

On November 10, 1964, in a "clarification" of its stand on "campus political action," the Senate said:

> . . . The ASUC Senate realizes that increased rights of advocacy, solicitation, and persuasion on the campus in the area of partisan politics brings cause for great concern on the part of taxpayers as well as individual legislators (in the State of California), [sic] since at times these extended rights on campus may result in illegal activities off campus . . . illegal activities for which the University often must answer to the taxpaying public, whether it wants to or not.

The Senate resolved to work with the Academic Senate and Chancellor on such matters, and to conduct a "speaking campaign" to inquire of, and inform, students of "possible solutions to this problem."[105]

Advocating and "mounting." The distinction between speech and the "mounting" of off-campus action proved an equally controversial one. Dean Towle's letter of September 14, 1964, stated that handbills could be distributed on the campus in selected locations, and "impromptu, unscheduled" speeches by students and staff were allowed at a "Hyde Park" area in a plaza near the Student Union. But students could not "support or advocate off-campus political or social action."[106] On September 21, the Dean responded to student requests for changes by agreeing to permit informative literature at a limited number of tables in the Bancroft-Telegraph strip. But she again stated that such materials could not "urge a specific vote, call for direct social or political action, or . . . seek to recruit individuals for such action."[107] In his September 28, 1964, speech, Chancellor Strong stated a new policy:

> In the designated places on campus now provided for distribution of printed materials by student groups, campaign

> literature may be made available for free distribution. Campaign buttons and stickers, voting lists and argumentation recommending a vote for or against a proposition or a candidate are included in printed materials which may be distributed in the designated places.[108]

The official distinction now was drawn between permissible advocacy or "argumentation" concerning votes for political candidates and the prohibited "mounting" of "direct action" off-campus. "Mounting" apparently included not only soliciting membership in political action groups and raising funds for them, but also the advocacy of "political or social" action beyond votes.

After the October 1-2 incident of the police car, the members of the Committee on Campus Political Activity (CCPA) wrestled with the distinction between "advocacy" and "mounting" without notable success. After the CCPA was dissolved, the report of the faculty members on the Committee began with the following statement:

> I. In the Hyde Park areas, the University interprets its present regulations as not requiring a distinction between advocating and mounting political and social action. The advocacy of ideas and acts which is constitutionally protected off the campus should be protected on the campus. By the same token, of course, speech or conduct which is in violation of law and is constitutionally unprotected will receive no greater protection on the campus than off the campus. Although there has been no case in which the distinction between advocacy and mounting action has been in issue, the position of the students and the recent resolutions of the Academic Senate and the Regents all support a University policy which, subject only to restrictions necessary for normal conduct of University functions and business, permits free expression within the limits of the law. [Emphasis in original.][109]

The faculty group's report helped to pave the way for the Regents' November 20, 1964, action allowing all but "unlawful off-campus action" to be organized on-campus. But the problem of advocacy and mounting, of speech and action, apparently remained. In his February, 1965, "Message to Alumni," President Kerr restated his view that "free speech" was not the issue:

> . . . There was and is great freedom of speech. There were limitations on direct political activity organized on campus.[110]

The FSM and its supporters urged that speech and other forms of expression are intimately involved in the organization and support of political action.[111] Like the ASUC Senate on October 13, 1964, the FSM denied that the University must take responsibility for all expression on its campus, even if that expression results directly in off-campus action, including illegality.

During the December 2 sit-in, Mario Savio stated his view:

> This free-speech fight points up a fascinating aspect of contemporary campus life. Students are permitted to talk all they want so long as their speech has no consequences.
>
> One conception of the university, suggested by a classical Christian formulation, is that it be in the world but not of the world. The conception of Clark Kerr by contrast is that the university is part and parcel of this particular stage in the history of American society; it stands to serve the need of American industry; it is a factory that turns out a certain product needed by industry or government. Because speech does often have consequences which might alter this perversion of higher education, the university must put itself in a position of censorship. It can permit two kinds of speech, speech which encourages continuation of the status quo, and speech which advocates changes in it so radical as to be irrelevant in the foreseeable future. Someone may advocate radical change in all aspects of American society, and this I am sure he can do with impunity. But if someone advocates sit-ins to bring about changes in discriminatory hiring practices, this cannot be permitted because it goes against the status quo of which the university is a part. And that is how the fight began here.[112]

It is not clear whether official University views have changed as to the relation of on-campus speech and off-campus action. The November 20, 1964, action of the Regents seemed to settle the matter for legal off-campus action. But the Regents and the President have declined to rule out all regulation of the content of on-campus expression despite the recommendation of the Berkeley faculty, and the November 20 action has now been rescinded. In view of the legal ambiguities, and the administrative discretion embodied in the President's new Policies on student conduct, it seems fair to say that this question remains unsettled at the University of California.

The University as Guardian of "Democratic Government"

The ASUC Senate's October 13, 1964, resolution, in the portion quoted above, called for student social "action" as educationally valuable. An earlier portion of the same resolution was more specific:

> Properly, a central goal of this institution should be to prepare students for emergence into our society as active citizens--people with something to contribute to the perpetual effort to perfect our way of life. It is our conviction that the University can only mold this kind of citizen by providing for him the opportunity to act upon his convictions, to apply his classroom thought to the laboratory of political activity. To do less, to content itself with armchair analysis of political movements and social problems, the University fails in fulfilling its educational responsibility. The whole import of this statement is based on the premise that any responsible action involved is a legal action. . . .[113]

The ASUC Senate thus appeared to go on record for affirmative University support of "democratic" citizenship--i.e., for *teaching* that special kind of political action necessary to a society based on citizen-participation.

"Consent of the governed." The FSM went farther. As we have seen, its leaders called on the University to abandon *all* restrictions on the content of speech, including speech which might result in illegality, and to leave students with the responsibility to answer for their actions before the civil authorities. Anything less, they argued, was not democracy but paternalism--that is, authoritarian rule from above, claiming to be benevolent. Hierarchic "management" of a university, they asserted, tends to teach passive submission to authority rather than the capacity for citizen-participation in government. Specifically, they condemned the September 14 ruling as "unilateral" and "arbitrary," and called instead for political-activity rules based on "consent of the governed."[114]

"Law and order." On October 2, 1964, President Kerr reiterated a stand he had taken the previous spring, when Berkeley students had been involved in illegal sit-ins off the campus. He told the ACE:

> . . . Demands were made by a few leading legislators that [the students] be expelled from the University. We refused to do so on the grounds that they had acted as citizens, not as students. However, if they had been recruited on campus or had made their plans on campus, we could not have drawn such a distinction. I said then, as I say now:
>
> > First and foremost, the University is fully and unalterably committed to the principles of

> democratic government upon which this nation was founded, among which is the rule of law. Only under a rule of law can all citizens be assured full rights and liberties, or redress when those rights or liberties are denied. Respect for the law of the land is imperative to the survival of democratic government. Those who deliberately violate a specific law, to test it or to call public attention to what they believe to be an injustice, must be prepared to accept the lawful consequences of their actions, which consequences may follow them for much of their lives; and they bear the very heavy moral responsibility of determining that there is no other effective recourse within the body of law and that the cause of justice which they seek to serve outweighs the exceedingly grave consequences of an act which weakens the total fabric of the law. Those individuals who enter into such an act may be paying merely lip service to democratic ideals while in actuality serving the cause of anarchy or some other cause.
>
> The University of California assumes responsibility for the preservation of law and order upon its campuses. The University deplores disrespect for the law on the part of any citizens, whatever their organizational ties.[115]

A month later, on November 2, Chancellor Strong expanded this theme in a speech before the local Town and Gown Club:

> . . . The employment of illegal means to secure ends desired in the name of freedom would, if tolerated, be destructive of freedom. Individuals enjoy freedom in so far as the guarantees are built into the laws that protect individual rights. When these laws are flouted, protection is weakened and a society is on the road to anarchy. Living as we do under a system of representative government, the right way to effect changes in the laws is by consent and majority vote.
>
> The functioning of any society requires that authority be vested in some individuals, be they judges, legislators, or executives. Arbitrary exercise of authority is always to be challenged, but defamation of authority duly exercised undermines respect for high offices and demoralizes a society.
>
> The University is a champion of intellectual freedom; it must no less be a champion of orderly and responsible conduct. It

> cannot and will not tolerate deliberate violations of its rules and regulations. If it did, it would be in the position of aiding and abetting disrespect for law and order. As the twig is bent, so the tree grows. . . .[116]

On November 20 the Regents "restated" the "long-standing University policy as set forth in Regulation 25 on student conduct and discipline that 'all students and student organizations . . . obey the laws of the State and community. . . .' " In addition, as we have seen, the Regents altered their policies to allow on-campus political activity "for lawful off-campus action, not for unlawful off-campus action."[117] On December 18, the Board of Regents directed the administration "to preserve law and order on the campuses of the University."[118]

Many internal discussions of alternative policies occurred within the administration and the Board of Regents during this period. In these major declarations by University officials, however, a basic position was enunciated: First, the University would not enforce the laws against students where their allegedly illegal actions occurred entirely off-campus, but would leave that to the "enforcement arm of the State."[119] Second, the University would enforce its own rules on its campuses, and would assume affirmative responsibility for "law and order" in general, within those confines. Third, the University's own policy would forbid the on-campus organization of "unlawful off-campus action," and this policy would be enforced by the University. Fourth, the University would go on record as affirmatively favoring students' obedience to "the laws of the State and community," and "deploring" any "disrespect for the law." Finally, "defamation of authority duly exercised" would not be tolerated, lest disrespect for law be thereby abetted. In Chancellor Strong's view, at least, the University must affirmatively teach students to respect authority, by means of strict enforcement.

"Civil disobedience" as "social protest." The FSM, as we have seen, squarely challenged this view. Quite apart from the question whether University rules were constitutional, FSM leaders argued, all content-restrictions should be avoided as a matter of University policy. Nonviolent civil disobedience, in their view, is only technically illegal; it is an open, symbolic act of protest against an entrenched social policy or practice, and cannot be dismissed as ordinary "criminal" activity. Instead, it is a technique used, sometimes at great, voluntary sacrifice by individuals, to focus public attention on an alleged injustice. It thus serves high moral purposes basic to a democratic society, they believe. Individual University officers might dispute the moral bases of such actions, and emphasize the technical illegality of the means. But, the FSM argued, at least the University as an institution should stand aside officially, and should allow the matter to be settled in the courts. As to "use" or "exploitation" of the University's facilities, they argued, the institution need only leave to the courts law-enforcement on the campus as well as off, and the protesting students would take their chances of fair legal treatment along with other citizens.

By mid-October of 1964, some faculty members had voiced similar themes. At its October 13 meeting, the Berkeley faculty passed resolutions favoring "maximum freedom of student political activity" and "peaceful and orderly" resolution of the campus dispute. But a motion to endorse student political freedom only as it remained "within the law" was voted down, after some professors had argued this would wrongly condemn civil disobedience. Two days later, the Berkeley Division of the Academic Senate passed another resolution which referred to the October 13 action and said:

> . . . [W]hereas, the attitude of the [Berkeley] Division has been widely misunderstood as condoning lawlessness, now, therefore, this body reaffirms its convictions that force and violence have no place on this campus.[120]

Some observers pointed out that "lawlessness" was not synonymous with "force and violence," and that the resolution seemed to cover force if used by students or by police officers. The faculty still had not condemned nonviolent "civil disobedience."

By mid-October, of course, the issue involved civil disobedience not only in the outside community, but against rules on the campus itself. On September 28-30, individual students had openly violated the ban on political fund-raising. Hundreds of students had signed "Petitions of Complicity" claiming they also had violated the same rule. Some of these had "sat in" for about 12 hours before the Office of the Dean of Students in Sproul Hall, demanding that disciplinary action against their leaders be dropped, and that there by "equal treatment" for all those present. Hundreds of students had sat down, and later several thousand had rallied, around a campus police car on October 1 and 2, "passively" preventing the arrest of a former student for manning a Campus CORE table. Some force had been used by students in preventing the early closing of Sproul Hall's doors on October 1, and some violence was said to have been done (and more threatened) to campus police officers trying to close the doors.*

---

* Mario Savio was charged by the University with biting a policeman on the thigh. Arthur Goldberg was charged with threatening police officers that he and others would "violently attack" them if they tried to remove Jack Weinberg from the police car. The local press reported that a police officer had been pulled to the floor and that his hat and boots had been removed but later returned to him. Students involved said they merely sat down in the doorways to prevent their being closed 45 minutes early, contrary to an "agreement" they believed had been made with the Chancellor by a faculty intermediary. Police officers walked upon their bodies before being pulled to the floor, the students said.

What justifies illegal protest? Concern over these events was reflected in the remarks of President Kerr and Chancellor Strong. It was also evident in the October 13 resolution of the faculty Senate, which called on all to maintain "the peace and order of an intellectual community" for the welfare of the University. But the leaders of the FSM declined to accept the idea that any substantial "community" existed between students and administrative officials. Insisting that the administration was not to be trusted, they cited as evidence what they considered the "arbitrary" action of the September 14 ruling; the use and subsequent abandonment of untenable legal bases for the underlying policy; free "reinterpretations" of University policy under student pressure; and evident strong concern for political reactions outside the University. These students therefore felt justified, not only in violating the specific rules being protested, but also in staging mass sit-ins such as that of December 2-3. In their view, these acts were symbolic rejections of the way in which University officials had "abused" their authority--not denials of all authority in principle. The protestors rejected any contention that their civil disobedience on campus constituted "lawlessness," "anarchy," or a serious threat to "democratic government." Instead, they viewed themselves as thoroughly responsible individuals, who had found it morally "necessary" to use civil disobedience as a humane and measured protest against the unchecked discretion of powerful and amoral functionaries in an autocratic bureaucracy.

Far from accepting the administration's emphasis on "law and order" in general, many of the activist students rejected in principle the notion that the formal processes of law are sufficient for the preservation of democratic values--especially within a university, where administrative discretion is largely unrestrained by "due process." They argued that the purpose of all law is not merely order but justice; when "injustice" is great enough, individuals must act "politically" to call the "injustice" before public scrutiny. The FSM leaders were convinced that the University's regulations would not stand examination in the light of informed opinion, which the symbolic protests of the sit-ins were designed to awaken. They believed also that events had proved they could "persuade" the University community to change disputed rules and practices more effectively by a drastic, collective "witness" to "injustice" than by the force of argument alone.

Faced with arrest, conviction, and legal penalty, most FSM leaders later argued these things are unjust also, since their acts were not "criminal" in character. Some urged that a "political climate" must be created in which courts are "enabled" to hand down verdicts that recognize sincere protests as justified even when they "happen to involve illegality." But, contrary to some predictions, they accepted the court's action without recourse to violence or the advocacy of it.

Constituted authority and reasonable men. Against this complex view of what is permissible in a democracy--and in a university which subscribes to principles of "democratic government"--University administrators (and many faculty members) emphasized the threat which "civil disobedience" implies to social order in general. They argued that it "encourages" all who disagree with prevailing rules to adopt extra-legal means of overthrowing them, and thus undercuts the social stability which legally constituted authority provides. Student "pressure" by means of deliberate violations was seen as an attempt to "intimidate" duly constituted administrative authorities, who as "men of good will" were attempting to weigh many competing values and to make reasoned judgments for the welfare of the whole University. Student suspicion of administrators was viewed as unjustified, and potentially destructive. In President Kerr's words:

> . . . America was founded not on fear, but on faith.
>
> Those persons who act as agents of suspicion and distrust, or who resort to conspiratorial action to defeat another conspiracy, or who resort to attempted mob rule, are unwittingly forsaking the very heritage they claim to protect. . . .
>
> . . . We need a reaffirmation of confidence in our citizenry, including its younger members, among them the vast majority of the students at our University: and of faith in the established institutions of our society, including its universities, among them our own, and including also the preservation of law and order.[121]

Behind this view lies the premise that a university is not a democratic society, but is one of the "established institutions" of such a society, chartered by an electorate for special and limited purposes. Edward W. Carter, Chairman of the Board of Regents, emphasized this in a statement on December 9:

> The Constitution of the State of California clearly charges the Regents with full and ultimate authority for conducting the affairs of the University of California. This they exercise principally through their appointed administrative officers and by delegation of certain specific but revocable powers to properly constituted academic bodies. . . .[122]

And at its December 18 meeting, the Board "reconfirmed" that:

> . . . [U]ltimate authority for student discipline within the University is constitutionally vested in the Regents, and is a matter not subject to negotiation.[123]

As a formal matter, then, any deference given to the "democratic government" of the University itself must depend on the judgment of the

Regents that this would further the institution's special purposes.[124] Principles such as "consent of the governed" simply are inapplicable to rules of student conduct. The particular "order" to be preserved and respected on the campus is determined by the Regents' authorized agents in such matters, the President and his subordinate administrative officers. Similarly, the student's relation to University government is not as a participating citizen but as a learner, whose extracurricular activities on the campus--like his educational experiences in the classroom--must at some points be regulated for consistency with the University's overall purposes. Students can best honor the principles of "democratic process" by accepting, after due discussion, the regulations deemed necessary by the Regents and their administrative representatives. As University officials reiterated periodically, "there are legal methods for resolving such controversy, if discussions fail to do so."[125] But "University authority . . . should be respected even while it is being questioned," and deliberate rule-violations on the campus cannot be condoned.[126]

It was on premises as fundamental as these that protesting students and University administration differed concerning the role of the university in the democratic process. As a result, University officials saw the proper role of the institution as affirmative and active in support of existing "law and order," on the campus and off. The FSM saw the University's management as inherently anti-democratic, and inescapably prejudiced against "justified" civil disobedience by the very "politics" it professed to avoid.

Issues for Further Study

Legal issues. Again, a number of legal issues are implicit in the discussion. Here are some of them: How do a university's "regulatory interests," its "normal functions," or its "specific and limited purposes" affect the legality of its official actions? What interests, functions, or purposes are recognized by courts as legitimately pursued by universities? On what sources do the courts call in making such judgments? In deciding whether a regulation is "reasonable" or "necessary" to serve a valid university interest, what weight have the courts given to the burdens it may place on other groups' or individuals' interests in free expression?

Further, how specific and substantive must a university "interest" be to justify restrictions on expression? For example, may restriction of speech content be legally "reasonable" because of a university interest in "good order and . . . generally accepted standards of conduct," or in the maintenance of "discipline and an atmosphere conducive to learning"? May a constitutionally valid disciplinary action be based on a regulation forbidding "conduct which significantly interferes with University teaching, research, administration, or the University's subsidiary responsibilities . . ."? Is a similar legal status accorded to specific university interests (like the quiet necessary for classroom activity) and to broad "organizational" interests such as the general preservation of internal order, the maintenance of "moral and ethical behavior," and the encouragement of "respect" for authority?

Finally, is a university legally responsible "as an institution" if it fails to prevent the use of its facilities for purposes which frequently involve illegality--such as mass protests using techniques of civil disobedience? What is the legal status in this country of mass, non-violent civil disobedience engaged in for the avowed purpose of improving social and economic justice?

Issues of policy. Similarly, many issues of university policy are involved. For example: How should university officials reconcile the conflicting interests of those on campus--for example, the interests in hearing all viewpoints, in having access to hearers, and in not being made to hear involuntarily? Should these interests be given equal weight?

More specifically, which of its many possible interests should a university attempt to serve by means of rules and their enforcement? Should a university set "higher" or more restrictive standards of extra-curricular expression on campus than are set by the courts? On what functions or interests should such standards be based? Should a university's rules attempt to protect its members from political "propaganda," or from shocking and offensive experiences, such as hearing "obscenities"?

Should universities encourage on-campus political expression and activity for their educational value to those participating? For their value in stimulating political discussion and participation generally? Should political activity on campus be discouraged as inevitably disruptive, and a distraction from serious scholarship? Should the involvement of non-students in campus political activity be restricted on the ground that they have "too much" time available for such things, and thus stimulate campus politics disproportionately? Should a university restrict on-campus expression if it is related to "direct" social or political action, but not restrict it otherwise?

In general, should a university's rules attempt to enforce or to teach "respect" for "law and order" or for authority on the campus? Should a university use its disciplinary action to discourage all illegal off-campus action by students? Should it penalize particular types of off-campus illegality--e.g., as affecting a student's "suitability" to continue in the university? If so, how should these types of illegality be identified?

Finally: Should a university undertake to penalize students engaging in open, off-campus civil disobedience said to be designed as social protest? Should university policy differ if the protest involves violations of law occurring on the campus? Should the policy differ if the civil disobedience involves violations of university regulations, with the avowed purpose of protesting those regulations? Should it make a difference whether the university regulation being violated is the one under protest? What steps, if any, should a university take to encourage, guide, or protect its students in sincere, morally inspired social protest involving risks of illegality?

Achieving University "Self-Government" Amid "Political Pressures"

One of the most complex and recurrent controversies of the FSM protests at Berkeley concerned the reactions of University officials to "political pressure." As we have seen, the State Constitution of California requires that:

> The University shall be independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, . . .[127]

Relying in good part on this provision, the University prior to November, 1964, forbade all on-campus political advocacy and recruitment, and fund-raising for most off-campus causes. University officials in the autumn of 1964 referred to the need for such restrictions to preserve the University's "future as an independent educational institution."[128] While details were never given, the implication seemed to be that if the campus were used for political action, the University risked becoming a subject of partisan controversy in all its affairs, and might even lose its constitutional status as a public corporation separate from other agencies of the State. After students' protests had attracted widespread publicity and considerable public disapproval, University administrators and faculty members warned student leaders that their open civil disobedience, and the harsh charges made against the Regents and President, would endanger the freedom of the whole institution, by inviting political repercussions in the State Legislature.

The FSM leaders, on the other hand, charged that those raising these fears were either disingenuous, timid, or--most probable of all--acting under precisely the kind of "political" influence from which the University was supposed to remain free. Students claimed that the original ruling on the Bancroft-Telegraph strip had been brought about by "pressure" from Oakland Tribune publisher William Knowland, after students participated in picketing his newspaper for alleged discriminatory hiring policies.[129] As the year's disputes progressed, FSM members charged that political pressures on University administrators made it impossible for them to grant the "fair hearing" required by considerations of "due process" in student disciplinary matters. In apparent agreement, the December 8 resolutions of the Berkeley faculty recommended that disciplinary matters in the area of student political activity be "determined" by a committee of the Academic Senate rather than by the Chancellor.

In some ways, the confrontation was a classic one in the history of public universities, and the issues were not new ones. However, the particular circumstances and events brought to light subtleties in the political relations of universities which are not often considered in normal times.

Can a University Be "Politically" Independent?

The history of troubled relations between universities and society is, of course, as long as that of the university itself.[130] The twin threats to the freedom of university scholars in medieval times were church and state, with the former the more pervasive influence of the two. Over the centuries, however, secular civil government has far outstripped the waning influence of the church as an "outside" threat to scholarly autonomy. Relationships of universities and governments are highly complex; only a few highlights will be presented here, as background for the discussion of issues central to the "free speech" disputes at Berkeley.

Formal relationships. Against the threat of government domination, most U. S. universities are shielded by a governing board of "lay" citizens who are formally charged with the general supervision and management of university affairs. The University of California is one of a handful of public universities in the nation to enjoy constitutional status in this regard. It is designated:

> . . . a public trust, to be administered by the existing corporation known as "The Regents of the University," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the University and the security of its funds.[131]

The University thus has considerable formal independence of the major organs of the State government. But even this formal separation is not complete. The Governor, the Lieutenant Governor, the Speaker of the State Assembly, and the State Superintendent of Public Instruction (all elected officials) are *ex officio* members of the Board of Regents, and the sixteen "appointive members" of the Board are named by the Governor to 16-year terms. Most of the University's operating funds are appropriated annually by the State Legislature. Prospective reviews and recommendations on both capital and operating budgets are made by the Legislative Fiscal Analyst, the Governor's Department of Finance, and the statutory Coordinating Council for Higher Education. The Council, in addition, makes recommendations to the Governor and the Legislature concerning the broad programs of all segments of state-supported higher education in California. In theory, at least, the University's operating funds are appropriated as a "lump sum," which may be expended as the Regents deem wise.

Informal support relationships. Because of the formal limits on its supervision by outside government officials, the University of California is often referred to as an "autonomous" university. In fact, however, these formal relations fail to describe the actual network of informal relations which are quite generally understood to connect every "public" university with its sources of support and with those whom it serves. Here are some of the areas in which state university officials today must be concerned with "outside" support, both in government and in public opinion:

(1) Lack of general political support in the state legislature and the general public could result in the imposition of statutory restrictions on university operations. In California, such restrictions would require a two-thirds vote in both houses of the Legislature and in a popular referendum. Several bills to modify the government of the University--e.g., a bill to establish legislative control of discipline over both students and faculty[132] were introduced in the 1965 session of the California Legislature; none was reported out of committee. Such restrictions would constitute the most obvious modification of a university's "independence."

(2) Every public university is engaged more or less continually in negotiations with state legislative and executive officials over the size and bases of the state appropriation of funds to the university. Especially in fast-growing universities such as that of California, a high value is placed on broad support among legislators, voters, and other public officials for higher education and for university policies in general. California State Assembly Speaker Jesse M. Unruh, in a Berkeley speech on March 2, 1965, emphasized the "consistent increases" in state budgetary support which the University of California had received, and declared in general terms:

> The Legislature has not used its powers of appropriation as a weapon of interference in the substance of university activity.[133]

In a period of growth, of course, the adequacy of the size of the increase typically is the central issue in fiscal negotiations. For example, the University of California in 1965 made a special supplemental budget request of the Legislature for funds to increase faculty salaries by 10.9 per cent, in order to redress recent losses in competitive position with other universities. The final appropriation amounted to a 7.65 per cent increase.

(3) Voter support of bond issues to finance capital expansion is highly important in a time of rising enrollments. In November, 1964, a month after the students' capture of the police car in Sproul Hall Plaza, the California voters passed a $380 million bond issue including substantial funds expected to go to the University. It is widely supposed that such votes are affected by "public opinion" as to the social value and operating efficiency of the University.

(4) Gifts from private individuals and groups are an important source of relatively unrestricted revenues at many state universities, including the University of California. Such gifts may be affected by public controversy over a university's policies. For example, alumni and other

private contributions to the University of California were reported by the administration to be unusually low in the period immediately following the Berkeley student protests. One man announced publicly that he was deleting a $2 million bequest to the University from his will because of its failure to discipline students who publicly violated its regulations. Others wrote to the University that they were suspending contributions because of its restrictions on student political expression.[134]

(5) The willingness of talented students and highly qualified faculty members to come to a university or remain there is thought to be affected by its policies, and these kinds of "support" are considered significant by every university's officials. Few state universities today need more students; however, each wishes for a higher proportion of the most talented. More importantly, the reputation of a university for understanding and fair-minded administration, concern for academic freedom, and regard for faculty opinion are generally believed to hold attractions for many of the most able scholars and scientists.[135] It is such faculty members on whom any university depends for its academic distinction, and in large part for its financial support from foundations and Federal agencies.

In addition to the whole institution, specific divisions and programs of the university are understood to have their special constituencies among legislators, executive officials, and segments of the economy. Commenting on this, Speaker Unruh said:

> These intra-university competitors for support build booster groups to aid their causes. As favors are received from supporters, favors must in turn be granted.
>
> If this all sounds like the style and structure of politics, it is for a good reason. Support, I suspect, must be purchased or bargained for in any open social system. It should not be surprising that units and interest groups within the university generate special clienteles in ways similar to some of the structures of party politics.
>
> . . . Thus, from the viewpoint of the state capital, the university is perceived as a variety of contending claims and interests. It follows from this that there is not a single relationship between the university and state government, but rather a whole series of relationships which stem in part from the internal complexities of university organization. . . .[136]

In somewhat similar fashion, a host of complicated relations has grown up in recent years between large universities and agencies of the Federal government. President Clark Kerr has written perceptively of universities' tendency to respond to outside stimuli, and of faculty entrepreneurship in the "Federal grant universities," which receive major portions of their funds from Federal grants and contracts for research and other services.[137] Other authors have expressed concern over the effects of high proportions of Federal support on the independence of university academic activities.[138] President Kerr elaborated his view of such matters in his main address to the ACE on October 2, 1964, concerning the emerging pattern of U.S. higher education:

> The system which will emerge will be neither atomistic nor monolithic. It will be a pluralistic one with many centers of power related to each other. . . .
>
> At the level of administration, the situation will continue to be very mixed. Already, detailed administration is variously shared by the institution itself, by foundations, by federal agencies, by coordinating councils, by state agencies and legislators, by consortia, by associations. It is high time that there be some clarification of respective managerial roles. Bureaucracies overlap bureaucracies. A gradual and piecemeal movement toward simplification would seem to be a natural consequence of a period highly creative in developing new mechanisms of coordination and control. But in the end, the administrative arrangements will remain complex because of the complexity of the interests involved.
>
> At the level of individual preferences by faculty members and students, the current level of freedom of choice will generally be maintained. . . . [W]e are a very long way from the central assignment of students to institutions and fields, or the central control of faculty positions and salary levels.
>
> Thus faculty and students retain their essential freedom; national authorities have the greatest leverage on new policy directions; and administrators are fractionalized and occasionally fractured at the levels in between.
>
> . . . In a pluralistic system there are constant small adjustments, few clarion calls. Neither autonomy nor interdependence has any ultimate claim one over the other. Their respective claims must be accommodated, inconsistent as they sometimes are. The process of accommodation is continual, sometimes faster, sometimes slower, but never ending. This is a great source of confusion in a pluralistic system. It is also the source of our great strength.[139]

President Kerr made it clear here, as elsewhere, that he sees the university as being highly interrelated with other parts of society. His language was that of politics--of power, interest, leverage, of competing claims and continual accommodation. As in the past, he referred to the strains on administrators who stand amid these forces and are buffeted by them.

Thus in late 1964 it was no secret at Berkeley (or any other university, public or private) that a host of informal relationships with sources of "support" surrounds and interpenetrates the university's formal structure, modifies its formal autonomy, and to an uncertain degree affects its policies. How those relationships do in fact affect policy--and how far they should affect it--remain very much at issue today.

The puzzle of "political" independence. If the University of California's formal independence of the electorate and the State and Federal governments is far from complete, achievement of the "political" independence required by the State Constitution has proved even more problematic. Until late 1964, the University for many years attempted to avoid "political" involvements by systematically restricting its contacts, not only with overtly "political" activities, but also with all social controversy. It prohibited use of its campuses for the "support" of candidates or propositions in election campaigns, and for the recruitment of political party memberships. But it also prohibited on-campus money-raising for most projects "not directly connected with some authorized activity of the University." And the University Policies stated generally that:

> . . . University facilities shall not be used in ways which will involve the University as an institution in the political, religious, and other controversial issues of the day. [Emphasis in original.][140]

By the spring of 1964, attention was focused on "social action" not in the province of any particular political party--notably the sit-ins at the Sheraton Palace Hotel, on behalf of employment opportunities for Negroes. This development resulted in President Kerr's May, 1964, speech (endorsed by the Regents in the same month), which drew a line between students' off-campus action "as citizens" and their organizing of such action on the campus. And in the autumn of 1964, it was on-campus support of off-campus "political or social action," in general, that was forbidden by Dean Towle's letter.

Early support for the "United Front" and its successor "Free Speech Movement" was doubtless related to the September 14 ruling's appearance during heated national, state, and local election campaigns. By September 28, however, Chancellor Strong had altered the campus policy to allow advocacy and the recommendation of specific votes on candidates and propositions--but not the "mounting" of action directed to the outside community. On the next day, student protestors began their threatened violations of the disputed regulations on campus, and on September 30 they staged the first mass sit-in at Sproul Hall. Thereafter, the focus of controversy shifted more decisively away from "partisan" political activity and toward the students' organization of mass demonstrations.

The lines thus became increasingly blurred between "partisan" political activity and controversial but "non-partisan" action which involved students with major social issues. For University officials, the problem became not simply one of avoiding governmental domination or immersion in party politics. The immediate question now was whether the University should--or could--avoid taking a stand "as an institution" on such "controversial issues of the day" as civil disobedience and the employment opportunities of Negroes.

In May, President Kerr and the Regents had attempted to draw the line at "disrespect for the law," without clearly condemning sincerely motivated civil disobedience.[141] They had, however, declared that the University "assumes responsibility for law and order on its campuses," and that students could not "use University facilities in connection with" any off-campus activity "as citizens." In the context of the University's standing Policies, the implication seemed clear that such use was banned because it would involve the University "as an institution" in the affirmative support of the off-campus activity.[142] But it was not entirely clear whether University officials wished to avoid giving apparent support to lawbreaking as such (emphasized in President Kerr's May 5 and October 2 speeches) or to avoid involvement in social controversy generally, because of its threat to the University's independence. The latter threat seemed to be emphasized by the general principle of the Policies, quoted above, and by statements such as that made by Chancellor Strong in his September 28 speech:

> On the one side, an individual as a student is held responsible by the University for compliance with its rules and regulations. On the other side, when a student goes off-campus to participate in some social or political action, he does so on his own responsibility as a citizen. He has no right, acting as a citizen, to involve the University, either by using its name or by using any of its facilities to further such an action. For, were the University to become involved, the consequence is clear. We ask and expect from the State an indispensable freedom residing in independence--independence that rests on fulfillment of a public trust, namely that the University will never allow itself to be dominated by, nor used by parties, sects, or selfish interests. By honoring this public trust steadfastly, the University is enabled also to honor and defend the rights of its members to act freely in the public domain in their capacity as citizens. The consequence of defaulting on this public trust would be the erosion of the independence

> of the University and the destruction of the position maintained by the University respecting the responsibilities of an individual as a student in the University and respecting his rights and responsibilities as a citizen of the State. . . .[143]

It was only after student protests had reached the crescendo of the police car incident that University representatives suggested, during discussions in the Committee on Campus Political Activity, that the organization of political and social action might be allowed on the campus if the line were drawn so as to prohibit support for off-campus illegality. At this point, University policy appeared to shift, so that on-campus political activity which had been understood to "involve the University as an institution" now was not officially considered to do so. The demand that University facilities not be used in support of "unlawful off-campus action" was continued.[144]

"Political pressure" by students. In this complex of events and explanations, the students protesting the September 14 ruling early concluded that it was pressure from outside sources which lay behind the sudden decision to enforce the rules at Bancroft and Telegraph. As political activists, the leaders of the campus political organizations were attuned to the effects of political pressures generally, and to maneuvering by those in positions of power. Many students were aware of writings by President Kerr and others on the administrator's problems in "mediating" among power-centers, and on the complex social pressures to which any public university is subject. Some emergent leaders of the protest had been schooled during the previous summer in the civil-rights conflict of the South. They had grown accustomed to opposing legally constituted officials who were backed by their communities' most influential citizens in moves deliberately calculated to minimize equality among the races. Some of these students had grown suspicious of all officials in large bureaucracies. These student leaders looked to the legislative protests that had occasioned President Kerr's speech in May, and to the inquiries from the picketed Oakland Tribune which admittedly had preceded the Bancroft-Telegraph ruling. They concluded the worst: that University officials were responding to pressures upon them from prominent members of the political scene, to discourage student support for Bay Area civil-rights activity.

Their response was to turn the weapon of "political and social action" against the University's officials and their rulings. Subsequent events encouraged many persons on the campus to see such action as remarkably successful in bringing about alterations of University policies, where more peaceful discussions had failed.[145] When University officials and faculty members urged the students to moderate their demands, lest they threaten the University's "independence," the students charged this proved anew their contention--that fear of public displeasure dominated official University policy.

As the academic year progressed, some faculty members came to believe this contention was well-founded. In late April, 1965, ten members of the Berkeley faculty circulated a statement entitled Campus Autonomy and the Regents: A Reply to the Meyer Report, which commented on the Meyer Committee proposals. Referring to the "so-called 'obscenity cases,'" the statement said:

> Although the utterances of the students affronted the personal sensibilities of some, and granting that this affront affords grounds for punishment, it would be difficult to maintain that the utterances, or the response to them, threatened any University function. It is all too obvious that what is feared is public reaction. But to assume that it is possible to prevent such incidents from occurring and from being exploited is to indulge in wishful thinking; to assume that it is desirable to strait-jacket a University to prevent all such incidents from arising is to elevate considerations of public relations above those of education and free inquiry.[146]

Against all charges of pandering to public opinion and political influence, University administrators asserted their patient reasonableness in exercising the discretion necessary to their official duties. For example, President Kerr has noted that when he returned to the campus on September 16, 1964, after the fateful letter had been sent to student organizations, several "adjustments" were shortly made, easing the original ruling.

> But those adjustments were not taken, as they were intended, as evidence that the administration was listening and responding favorably to student requests. They did not lead to willingness to talk and be reasonable, but rather to greater and greater demands and to more and more direct action.[147]

Later, during the CCPA discussions, Vice Chancellor Alan Searcy urged the FSM representatives to acknowledge that University administrators were "men of good will," and so could fairly rule on student disciplinary matters.[148] And President Kerr's statement of November 12, 1964, after the CCPA discussions had broken down, said:

> In any situation such as this, it is inevitable that men will err and misunderstandings will develop. But I have been dismayed by the assumption of some students and some staff members that any such errors or misunderstandings are part of a deliberate effort by this administration to deprive the University of its freedom. Clearly the facts are otherwise. There never has been a period in the history of this University when there has been a greater increase in freedom for faculty and students and greater protection of the freedom of faculty and students.

> . . . But I would be remiss in my obligation as President if I allowed intimidation to replace reason as the standard for making judgments, and I do not intend to see this happen. . . .[149]

In other words, University officials maintained that "fairness" to all parties is possible despite the diverse pressures on administrators. However, they insisted, many values must be weighed besides those involved in student conduct regulations. As representatives of the whole University, under authority delegated by the Regents, administrative officers must make judgments on behalf of the entire organization. Moreover, the President and Chancellor stated repeatedly, there are imperatives contained in the University's charter and in its "educational" function for society that must be used as guides to proper policy. Thus there are legitimate pressures for restrictions on campus political freedom. These must be weighed against students' demands, by the officials charged with establishing and enforcing University policies.

Intellectual Community and Political Diversity

By the momentum of its protests against University regulations, the FSM found, it had become a "political" force in the University itself--had acquired an unexpected ability to affect basic University policy.[150] Their demands, FSM spokesmen said many times, were not merely legally or even constitutionally based. They were also "political" and "moral" demands,[151] based on deep convictions of many persons as to what is right, and what should be the character of life in a university and a free society. Never mind what the formal, legal relations are at the moment, they argued to their constituents; if these have produced the present situation, they are bad.

"Community" vs. "bureaucracy." On this basis FSM rejected a view of the University as a kind of "business corporation," with its administration entrusted under a broad charter to a small group of Regents and delegated at their discretion to administrative officials. In the FSM leaders' opinion, that view had precisely created the problem. Mario Savio put it perhaps most strongly:

> In our free-speech fight at the University of California, we have come up against what may emerge as the greatest problem of our nation--depersonalized, unresponsive bureaucracy. We have encountered the organized status quo in Mississippi, but it is the same in Berkeley. Here we find it impossible usually to meet with anyone but secretaries. Beyond that, we find functionaries who cannot make policy but can only hide behind the rules. We have discovered total lack of response on the part of the policy makers. . . .

> The same is true of all bureaucracies. They begin as tools, means to certain legitimate goals, and they end up feeding their own existence. . . .[152]

Against the "bureaucratic" corporation, speakers at FSM rallies appealed repeatedly to the values of "community," and of democratic participation in government; to "consent of the governed" for the rules under which they live. They argued that a university "is" (i.e., should be) its faculty and students.[153] These two groups perform all the essential functions of education and research, they argued, except "caretaker" roles--which may be left to administrators, but which imply to supervisory authority.[154] In the ideal of such a community, the authority of all "outsiders" is to be considered illegitimate--and the Regents were placed beyond the pale.

Most of the Regents, FSM leaders argued, are not qualified "academically" to govern a university; moreover, they are not non-political, as the State Constitution requires. Indeed, the FSM suggested, it is naive to believe that this is possible. Regents have their own views of proper social policy, and their interests are intimately bound up with those views. Since most of the Regents are associated with large and successful commercial, industrial, or financial corporations, the FSM leaders reasoned, it is to be expected that they will strongly favor preservation of the social status quo, will opt for stability and for little change of existing "power-relations" in society. The FSM charged the Regents with pursuing such interests by systematic attempts to suppress student political action for social change.[155]

Administrators, they argued, also could be seen pursuing their special interests at the expense of political freedom. Administrators' special interests include the avoidance of all "boat-rocking" controversy, maintenance of acceptability to the Regents and to outside political forces --and, in general, whatever supports the ever-expanding empire of "a 'multiversity'; a public utility serving the purely technical needs of a society."[156]

Most faculty members, the protesting students charged, had "sold out" to the promises of good salaries, low teaching leads, plentiful research funds and facilities of the multiversity--and had (except for December 8) generally forgotten the basic moral and intellectual concern of the scholar for the full and free expression of ideas. FSM leaders frequently called on the Berkeley faculty to support FSM contentions, and they looked to faculty members chosen by the Academic Senate as potentially "impartial" members of disciplinary review committees. But they argued that student interests must be represented by students as well.

Diverse interests within. Thus the FSM called upon the values of "community" and of popular participation in decisions as an alternative to the idea of the University as "administered" public trust. But their demand was for broader internal participation in the University's government, as opposed to participation by taxpayers, parents, citizens generally, or pressure groups in the larger society. They demanded recognition that a diversity of interests exists within the University "community" and asked that interests be represented by those who share them. For example, on November 20, 1964, an FSM leaflet on "the Principles Behind the FSM Platform" stated:

> We hold that students should have an effective voice in the enactment, interpretation and enforcement of regulations governing campus political activity. When a body of students is constituted to perform this function, we hold that a majority of its members should be democratically selected by the students directly involved in political activities.[157]

Similarly, the FSM called openly for "negotiation" in the CCPA between administrators and the protesting students concerning new University policies. They rejected the idea of further "consultation" with students by persons who, the protestors had concluded, were working to preserve interests essentially opposed to the interest in free political expression.

Again, such a view of the university, as a battleground among power-centers within, was not without precedent in the writing of President Clark Kerr. In his perceptive Uses of the University, he said:

> Academic government has taken the form of the Guild, as in the colleges of Oxford and Cambridge until recent times; of the Manor, as in Columbia under Butler; and of the United Nations, as in the modern multiversity. There are several "nations" of students, of faculty, of alumni, of trustees, of public groups. Each has its territory, its jurisdiction, its form of government. Each can declare war on the others; some have the power of veto. Each can settle its own problems by a majority vote, but altogether they form no single constituency. It is a pluralistic society with multiple cultures. Coexistence is more likely than unity. . . .* [158]

A major difference in the FSM view, of course, concerns the extent to which the students do have their own "government." The protestors called the ASUC Senate "sandbox government" because its powers are explicitly "delegated" to it by the President, and are subject to administrative veto.[159] The FSM leaders believed that the interests of students had been given little consideration by University decision-makers in the past; moreover, this appeared to them to depend on the students' lack of "political" power. For when they achieved such power through the use of the mass-demonstration tactics they had learned in working with other "unrepresented minority groups," they were able to catch the decision-makers' attention as never before and, in their words, to "begin a dialogue."[160] Thus they determined to demand that a new authority, not delegated by the President, be recognized in student representatives: They would speak for "constituents" sharing the same interests, where decisions concerning those interests were concerned. Jack Weinberg, a member of the FSM Steering Committee, has written:

---

* The passage continues by saying that the university president's first task is "peace - how he may 'the Two and Seventy jarring Sects confute.' " His second task is "progress." As other commentators have noted, President Kerr declined to say much about how "progress" is identified amid the struggles of the "jarring Sects."

> The students' basic demand is a demand to be heard, to be considered, to be taken into account when decisions concerning their education and their life in the university community are being made.[161]

Participation in University rule-making. In summary, the FSM called for internal "government" of the University through a politics based on interest, and on intimate familiarity with the circumstances of academic life for students and scholars. In this government, students as such would be given a substantial voice concerning the rules governing their actions. The authority of Regents and administrators would be restrained as far as possible, in recognition of their essentially extrinsic relation to scholarship. Public opinion would be not allowed to affect University policy on the conditions of inquiry and expression.

No faculty group articulated such a position. However, the December 8, 1964, resolutions of the Berkeley faculty Senate called for an Academic Senate committee to "determine" matters of discipline "in the area of political activity." Some faculty members reasoned that University administrators, being officially responsible for the institution's relations with government and the public, must necessarily come into contact with "political" pressures. Putting aside the question whether administrators tend to accede too much or too little to such pressures, these faculty members suggested that it might protect the administrators as well as the rights of students to place final determination of politically sensitive controversy in a committee composed of tenured faculty. Members of the University's Department of History pointed out that the "supervision" of student discipline had been made a responsibility of the faculty as early as 1920. The "administration of student discipline with powers to act," had been "entrusted" to the President by the Academic Senate in 1921, and full formal authority over the area of discipline had been transferred to the President by the Regents in 1938.[162]

When the December 8 resolutions were presented to the Regents on December 18, 1964, the Board declined to accept the suggestion on discipline. They confirmed that:

> Implementation of disciplinary policies will continue to be delegated, as provided in the by-laws and standing orders of the Regents, to the President and Chancellors, who will seek advice of the appropriate faculty committees in individual cases.[163]

The year's controversies also raised more general concerns about the conditions of University "self-government." The Faculty Forum, in its draft Statement of March, 1965, expressed renewed concern over the possible "intervention of non-academic public bodies" in University affairs, if the "University community" should fail to "exercise" its "indispensable right to self-government . . . fully and responsibly at all times." The Forum reaffirmed the full authority of the Regents, and called for responsible self-government by the "University community" to "justify" the Board's "delegation of disciplinary authority." The Statement urged the faculty to endorse "formulation by the Acting Chancellor of regulations founded on fair and effective procedures in consultation with the Berkeley faculty's Committee on Academic Freedom" and other appropriate committees. And actions "designed to disrupt or halt the scholarly, educational or administrative functions of the University, as distinguished from peaceful assemblages and orderly protests, are illegitimate means of resolving differences."[164] Thus the Faculty Forum draft explicitly endorsed retention of the Chancellor's authority over disciplinary rules and regulations on expression, with the faculty's role to remain a consultative one. Consultation with students in the formulation of rules was not mentioned.

On December 28, 1964, the Committee on Academic Freedom of the campus Academic Senate released its recommended rules for student political activity. On January 3, 1965, one day after taking office, Acting Chancellor Meyerson (with the concurrence of the faculty's Emergency Executive Committee) issued brief "provisional" rules concerning political activity. FSM leaders complained that they had not been consulted in the formulation of either set of rules. On January 5, the Academic Senate voted to file the more detailed rules recommended by its Academic Freedom Committee, until the Acting Chancellor could act in his own way. On April 1, Chancellor Meyerson issued revised "interim" rules, based partly on his discussions with students and faculty during the Spider episode.

Meanwhile, during January, February, and March of 1965 the Regents' "Meyer Committee" had held hearings and heard testimony from faculty members, administrators, student newspaper editors, and student government officers. Written comments were also requested from all campus student organizations, and some individual discussions were held with "Cal Club" members and ASUC Senators at Berkeley. On April 27, 1965, the Committee's tentatively recommended revisions in the University-wide policies on student conduct were published; comment on them was requested by May 6, so that a final recommendation could be made at the Regents' May 21 meeting. The FSM denounced the recommended rules as

"A Bill of Wrongs," in some ways worse than the old rules. The GCC drafted a "Student Bill of Rights" in opposition, and circulated it on campus. The Meyer Committee received many other comments on the proposals, both favorable and unfavorable, although it could not agree on the proportions of each.[165]

One faculty group issued a detailed Critique of the Meyer Committee Regulations, and a separate Reply to the Meyer Report; the latter said:

> The fundamental fallacy of the Report is the assumption that it is proper for the Board of Regents to establish detailed regulations for all campuses of the University. Any set of restrictive rules intended for such widely diverse contexts cannot fail to be harsh; uniformity tends by definition to be indifferent to local needs and hostile to the spontaneity of natural development. . . .

The Reply concluded:

> A community of learning ought not to be governed by a chain of command. Instead decisions affecting its primary functions of teaching and the discovery and dissemination of knowledge should be left to the scholar-teachers who are directly concerned with and expert in these activities. In our multi-campus University, this means that such decisions must be left to the faculties and administrators of the individual campuses. Only the most general policies affecting all campuses should be determined by the Regents and executed by the statewide administration. The continuing vitality and distinction of our several campuses depends upon the recognition of these principles and such redefinition of University organization and functioning as they require. It is to be hoped that such redefinition can be effected within the present regental system.[166]

Again, the Reply of this faculty group did not call for increased student authority in matters concerning their speech and expression. It left all such matters to each campus's "faculty and administrators," whom it grouped together as "scholar-teachers" having the necessary expertise and familiarity to interpret University functions for the individual campus. No mention was made of a diversity of interests within a campus.

Meanwhile, tests of these principles continued on the Berkeley campus. After Acting Chancellor Meyerson ordered Spider magazine banned from the campus, he wrote on March 23, 1965, that he had acted in his "capacity as educator," to "maintain the conditions on the campus best conducive to teaching and research."[167] He said that faculty committee members would "advise" him in their similar capacities. But it was still he as Chancellor who made the ruling. Later, when he issued revised "interim" rules, allowing *Spider* to be sold by student organizations if it served their legitimate purposes, Chancellor Meyerson also overruled his faculty advisory committee and continued a ban on the play called *For Unlawful Carnal Knowledge*.[168] Some students disagreed with the Acting Chancellor's distinction between the two publications.* They asserted it was adopted as an inexpensive "face-saving" device, since the play already had been sold out and the author had announced he would print no more copies. Students therefore claimed this incident, while unimportant in itself, proved that "arbitrariness" was still possible in administrative rulings on campus expression--and likely in cases attracting strong public reaction.

The *Byrne Report*, prepared for the Forbes Committee of the Regents, described the fall's controversies as being, in good part, a crisis of governance in a university system that had grown too far too fast. The *Report* recommended that the Regents "delegate their enormous powers" of organization and management, accept more leadership from the President, and charter each campus as "an autonomous member of a University commonwealth," with responsibility on the "Chancellors, administration, and academic community" of each for "results achieved, not for conformity to method on a statewide basis."

Also, the *Report* said, the relation of campus administrative officers to Divisions of the Academic Senate "has long been confused, ambiguous, and a sporadic source of conflict." For example:

> In some areas the Senate is a legislative body making basic policy, which the administration then carries out. In other areas, the administration makes basic policy, and the responsibility for implementing it is left to faculty committees, either appointed by the administration, appointed by the administration with the advice of the Senate, or appointed by the Senate itself. In still other areas, the administration makes policy and also attends to the problems of implementing it.[169]

Neither President Kerr nor any Regent has publicly endorsed the *Byrne Report*'s recommendations. However, on May 21, 1965, President Kerr presented to the Regents his own proposals for further decentralization of administration within "one University of California as provided in the Constitution." He reminded the Regents of considerable decentralization already accomplished during his Presidency. Substantially increased delegation "to the campuses" was proposed in areas such as academic and nonacademic personnel, construction, grants and contracts, and budget transfers. It would be expected that each campus:

---

* Chancellor Meyerson said that the play had a cover "designed to affront the passerby, who has no choice but to observe it." The cover carried the title, the words "a play" and the price, ".15"--all in script letters of the same size, about 1/2 inch high.

> (1) Decentralize internally, exploring opportunities for:
>
> a. Effective delegation to deans and department chairmen;
>
> b. Distribution to colleges, schools, and departments of some functions of such agencies as the Graduate Division and the Office of the Dean of Students:
>
> . . .
>
> . . .
>
> (3) Associate students, in an advisory role, more fully in the development of educational policy, cultural programs, etc.[170]

On June 18, 1965, President Kerr presented a further report on recommended reorganization. As the Regents' Minutes record:

> . . . He stated that his proposals assume that The Regents may be willing to reverse their historical approach to their responsibilities and delegate to the administration responsibility for all matters not specifically reserved for action by the Board. He pointed out that his proposals do not contemplate that the Regents would relinquish their traditional authority over, and responsibility for, the affairs of the University, but, rather, that they would devote their time to matters involving major policy decisions, major appointments, review of performance, etc.

The Regents approved "the basic substance" of President Kerr's proposals and authorized him to proceed with them, subject to later votes on specific amendments to University By-Laws and Standing Orders.[171]

At the June 1965 meeting, the Regents also discussed the President's proposed new Policies concerning student conduct. Some suggestions were made for changes in the draft Policies, and several Regents indicated "concern" at the idea of delegating their authority in "areas related to basic liberties." However, "there was a general consensus expressed" that the Regents might comment, but the Policies were to be issued by the President, and the Board should not "interfere with administrative matters" by "taking a position" on them. The Policies apply to all University campuses, but Chancellors are allowed or required to "establish and issue implementing campus regulations" in certain areas, which will be reviewed by the President "for consistency with Universitywide policy."[172]

Authority delegated under the President's proposals is formally assigned to the Chancellors. Through the Chancellor's delegation to other administrative officials and to academic bodies, some observers expect, this authority may be shared by others on each campus. But no specific arrangements for working out such sharing have yet been established at Berkeley.

The students' own "government." During the spring of 1965, one major focus of controversy at Berkeley concerned the proper powers and constituency of the campus "student government," known as the ASUC Senate. The FSM had been severely criticized during the fall of 1964 for "bypassing" the ASUC Senate; its leaders replied that the ASUC possessed no meaningful powers beyond that of petition, and that this power had been exercised without success in relation to political expression.[173] Moreover, the FSM argued, the ASUC was restricted to concerning itself mainly with management policy for the campus bookstore and for athletic and recreational events. Thus, they said, ASUC elections drew a minority of voters, and the Senate had few members who were interested in or understood real political problems. During the 1964 events, the ASUC Senate usually disagreed with the FSM's tactics, although it early advocated liberalizing the rules on student political activity. On December 8, 1964, it was announced that candidates from SLATE, a student political group which had actively supported the FSM, had won all seven of the contested seats in the ASUC Senate elections. By December 15, an ASUC move was initiated to make possible reentry of graduate students to the Association. (They had been removed from the Association and relieved of the membership fee by the administration in 1959, after a poll which was said to indicate little interest among graduate students in membership.) Graduates and undergraduates polled in February and early March of 1965 indicated graduates should be reincluded. However, on President Kerr's recommendation the Regents in March ruled that graduate students could not be charged the compulsory ASUC membership fee unless a much larger proportion of those on campus voted for it.[174] Succeeding "elections," "polls," and ASUC committee rulings left the matter indeterminate. However, on April 27, 1965, it was ruled by the ASUC Senate that graduate students could voluntarily join the ASUC individually, and could vote in elections by paying the necessary membership fee. Only a few did so. In the 1965 spring ASUC elections, SLATE candidates lost the campaign for the ASUC presidency, and failed to gain a majority of Senate delegates. (See chronology.)

More general issues than these were under discussion, however, concerning the ASUC's powers. University policies since 1959 had made explicit the fact that the authority of each campus student government is "entrusted" to it by the President through the Chancellor, as a part of the power delegated by the Regents. The powers delegated include "the management of extensive properties" (such as the ASUC bookstore, which is run by a full-time manager), and a "usually decisive" voice in "the determination and administration of broad areas of University policy of the most direct concern to students in their out-of-classroom activities." But these powers are limited, "even within the area of delegated authority." The principle reasons are these:

> The Regents and the President cannot escape ultimate responsibility for good management of the University's affairs--including those affairs delegated to student governments. Nor can student governments disassociate themselves from the responsibilities which go with the exercise of the authority of the University. In the second place, the rapid turnover of students creates special problems of continuity of operations and policy. . . . Many of the important problems with which student governments deal . . . affect areas of academic and alumni as well as administrative interests. As a result, some participation by faculty, alumni and administration in student government must exist.

One specific limitation was of particular interest to the FSM:

> 4. Student governments are established by the University for the purpose of conducting student affairs on the campuses. Students with widely varying political, religious and economic viewpoints give them financial support; hence it is certainly not appropriate to permit student governments to speak either for the University or for the student body with reference to the off-campus political, religious, economic, international or other issues of the time. Therefore, student governments and their subsidiary agencies may not take positions on any such off-campus issues. Any questions of jurisdiction arising under this rule shall be determined by the Chief Campus Officer or his duly designated representative.[175]

This provision had been challenged as anachronistic by SLATE members for some years.[176] In the aftermath of the FSM controversy, the ASUC Senate at Berkeley voted 12 to 5 for a resolution urging the Federal government to act on behalf of Negro rights in Selma, Alabama. During discussions of these actions with the Regents, Acting Chancellor Meyerson said that he thought little would have been accomplished by declaring the ASUC action "void" since a telegram had already been sent notifying the White House of the action. He said the ASUC Judicial Committee had ordered nothing more be done to follow up the Selma resolution. One reasonable solution to such problems, Chancellor Meyerson thought, would be to make ASUC membership voluntary.[177]

When the Meyer Committee's proposed regulations appeared, they included an explicit restriction as to "Non-University Issues":

> Student governments, with either voluntary or compulsory membership, may act or take positions only with reference to University-related issues (i.e., issues directly related to the University or its operations). The Chancellor shall determine whether specific issues are University-related issues.

The Committee also proposed in general that:

> The constitution of each student government shall set forth such powers as have been delegated to it by the Chancellor.[178]

Members of the Graduate Coordinating Committee, some ASUC Senate members, and others declared these restrictions unacceptable and insulting to a body termed a student "government." The GCC campaigned for a new preamble to the ASUC Constitution, which would omit all reference to authority delegated by University officials. The faculty group which wrote the Reply to the Meyer Report stated:

> The Report exhorts students to exercise their rights in a responsible manner, but when it turns to that area in which the students would be expected to practice the arts of responsibility, namely, the area of student government, the Report destroys the very preconditions of responsibility; for it makes student government wholly dependent on the authority of the Chancellor.[179]

The report to the Regents of Special Counsel Jerome Byrne also commented on the actions at Berkeley and Riverside:

> . . . We fail to see how the University itself is involved in off-campus issues so long as the ASUC Senate announces the vote results and the announcement makes it clear that the body which took the vote was not the University itself. Nor can we see any legitimate complaint of the student body involved. If the students do not want their representatives to vote on off-campus issues, they can forbid this in the ASUC constitution. Whether or not the student Senate is authorized to take such votes, we think is a matter the students should decide.[180]

Some modifications in the Meyer Committee proposals on student governments were made for the new Policies issued by President Kerr as of July 1, 1965. Establishment and delegation of powers by the Chancellor are continued, as is the provision that a student "government" may include all or "particular segments of" the campus student body. Compulsory membership may be required only after a two-thirds majority vote in favor, by a "substantial number" of the "affected students." Student governments with voluntary membership are permitted, in the discretion of the Chancellor, "with such delegated powers as are appropriate to such voluntary organizations"; they "may take positions on non-University related issues, provided they make it clear that they do not speak on behalf of the University or the student body as a whole." Officers of all student governments may identify themselves as such in expressing their views on any issue if they make it clear they speak only as individuals.[181]

On May 5, 1965, ASUC President Charles Powell announced that a committee of the Senate was exploring the possibility of a constitutional convention during 1965-66, to revise the basis of the ASUC. Plans for such a convention proceeded under the new ASUC leadership elected May 10.

The turn toward collective bargaining. One major result of the shattering events in the fall of 1964 was to create a sense of collective interests and of solidarity behind "student rights" in a much larger group of Berkeley students than had shared such sentiments before. How large a group was affected, and how strongly, it is impossible to say.

On December 10, 1964, 250 graduate students met and formed a Union of University Employed Graduate Students, later renamed the Union of Employed Students (UES). This group was chartered in January, 1965 as Local #1570 of the American Federation of Teachers (AFL-CIO), with 100 members; by June, 1965, it claimed a membership of 500. Composed primarily of teaching assistants, research assistants, readers, and student library employees, the UES during the spring entered into discussions with the faculty members of a number of departments in attempts to negotiate more favorable employment security rules, grievance procedures, teaching loads, pay, and other working conditions on jobs typically filled by students. The union claims "*de facto* recognition" and improved working conditions in several departments of the University as a result of its efforts. It also affirms "that political and social action are explicitly linked to the educational process," and has joined officially in several protest actions concerning national foreign policy.[182]

The "obscenity" controversy in the spring of 1965 made it clear that the specific "rights" at stake were vital to support for the student protest. Although matters of principle were involved in the spring as well as the previous fall, there never was broad student enthusiasm for what critics immediately branded the "filthy speech movement." An FSM leaflet in mid-March said: "The FSM did not initiate or support this controversy."[183] In early April, open disagreements developed among protest leaders about the range of issues which should be actively followed by the FSM--whether speech and expression alone should be of concern, what emphasis should be given educational reform, etc. During this time many of the student protestors were busy with continued action for Negro employment opportunities or against U. S. military action in Vietnam and the Dominican Republic. Most found much time was taken up by their trial on misdemeanor charges for the sit-in of December 3, and by the need to catch up on academic studies neglected during the fall. Thus by mid-April a turning-point had been reached.

On April 28, 1965, a group of former FSM leaders announced that a Free Student Union (FSU) had been formed to replace the FSM, which soon would "officially dissolve." The new group's "Declaration of Independence" said:

> . . . The FSM, born in crisis, has never paused to organize a permanent membership not to develop the close and continuous contacts between leaders and constituency necessary to a democratic movement. We never before believed that it would be necessary to form a permanent organization which would institutionalize the struggle; we never believed it would be necessary to plan on a long-term basis. The events of the past few weeks have proved us wrong. Now is the time for students to join together to form a permanent, democratic membership organization to carry on the fight to free this university from outside control. The successor to the FSM shall be the Free Student Union, based upon the following declaration:
>
> > As students, we have certain rights which no agency can legitimately grant or deny; among these the right to govern our own internal affairs, to set our own standards of conduct, and jointly with the faculty to determine the form and nature of our education.
> >
> > Our University exists for the extension and transmission of human knowledge. It is a community consisting of students and faculty and those who are employed to serve our needs. Final authority in this community must therefore rest with us, the students and faculty.
> >
> > Yet a body external to the life of the University - the Board of Regents - claims full power to govern the University in every detail, either directly or through its agent, the administration. No rights are reserved to the University community; neither the students nor faculty deliberative bodies have any powers save at the pleasure of the Regents.

> Therefore, we the students of Berkeley now establish a Union which will fight to secure our rights and to end continual outside interference.
>
> . . . Membership cards shall be available for a 25¢ joining fee. The only requirement of membership is basic agreement with the above declaration and a commitment to fight for those principles.[184]

The FSU organized itself by "locals" organized around academic departments, issues in which students shared interests, and even around "time-slots" which students had free from classes. By June, 1965, it claimed a membership of 2,500.

In mid-May, 1965, FSU representatives requested they be allowed to address the Regents concerning the Meyer Committee proposals; they met with President Kerr and Acting Chancellor Meyerson concerning this possibility. Regents' Chairman Edward Carter declined the request. He telegraphed the FSU that student comment already had been heard by the Meyer Committee proposals, and noted that the union "enjoys no official status" in the University.[185] At the May and June, 1965, meetings of the Regents, FSU representatives asked permission to speak, but were refused. At the May meeting, an FSU representative made a brief statement despite the Regents' refusal to hear his delegation; he charged that the Regents had "closed" the "legitimate channels" of communication while "accusing" student protestors of not using them. However, Berkeley ASUC President Charles Powell immediately asked that the Regents hear only from campus student government representatives. The Regents in June discussed possible future procedures for allowing certain student groups to address the Board when it meets on their campus.[186]

Early FSU leaflets stated:

> A student union, just like a labor union, is formed to defend against management the rights of those who are managed. Unions organize, pass resolutions, bargain - but every union worthy of the name knows that in the final analysis its demands can only be met through action or the threat of it.[187]

To date, no strike or threat of strike has been organized by either the FSU or the UES at Berkeley.

Issues for Further Study

Legal issues. While most of the issues involved in this discussion are "political" rather than "legal," some difficult questions of law remain. For example: What are the precise formal rights and obligations obtaining between a constitutionally "autonomous" university such as the University of California, and the various officials of State government? Could a state legislature legally alter such a university's appropriations in open reprisal for failure to follow legislative wishes on policy or practice? Does the "public trust" created by the California State Constitution imply any legal duty to take account of needs or viewpoints expressed by spokesmen for large segments of the population?

Have student "unions" any legal status as collective bargaining agents for their members' interests? What is the legal status of unions composed of student-employees in a public, constitutionally autonomous university?

In what ways is a university legally liable for the acts or omissions of its official "student government"? Is a university liable for the acts or omissions of other student-membership groups that use the campus? Is it liable for acts of a "non-university" organization that includes university students or faculty members, if the organization is allowed to use university facilities for its activities?

Issues of policy. Some of the universities' most difficult policy problems involve "political" activity. For example: Should a university attempt to avoid all "political influence," and/or involvement "as an institution" in the social controversies of the day? Should freedom of expression on campus be restricted if necessary to achieve this? If so, in what ways?

More generally, when university officials encounter outside "pressures" concerning on-campus expression, what should be their posture regarding such pressures? Should a university's representatives demand that such pressures be withheld by members of the public, or that the university community have full freedom to react as it sees fit, without reprisal? How should a university's representatives distinguish between proper and improper communications about university policy generally, and how should their responses to the two be different? Should the response to requests or "pressures" communicated by outside groups vary according to the makers' economic or political power to affect vital university interests? If so, what interests should be given priority and protection--for example, as between interests in economic support and in freedom of on-campus expression? If power alone should not determine university officials' responses to outside demands, what additional criteria should guide them?

In its internal affairs, should a university allow or encourage the organization of "pressure groups" to support the various interests of students, faculty members, and others (e.g., full-time research professionals) in the campus community? What groups should participate significantly in formulating, ratifying, and applying rules of on-campus expression, or of student conduct generally? For example, should controversial questions of political expression be finally determined by a committee of tenured faculty members? What weight should be assigned to faculty, student, and administrative concerns in such matters, so far as these differ?

How should the interests of students be represented in the creation and application of student-conduct rules? What weight should be given to campus-wide student representation, for example, as against the interests of smaller groups especially concerned with freedom to express controversial or unorthodox views? Should agents of the university or its departments grant formal recognition to "unions," "movements," or other organizations purporting to speak for the interests of some or all students? Should de facto negotiations be conducted in some circumstances with such groups, whether formally recognized or not?

Should universities encourage or allow the formation of student "governments" based on student representation alone, without delegation or limitation of authority by the administration? Should membership in any such "government" be voluntary or compulsory for a university's students generally? What prerogatives and obligations should such a "government" have concerning the use of the university's facilities or name, the control of university-collected funds, or "representation" of general "student" interests in university councils?

The very statement of these issues suggests, of course, the many other formulations which might be made, and the great number of specific problems that arise in attempting to resolve any one of the issues presented. These, however, are some among the major questions that continue to vex policy-makers at Berkeley--and which, in some form, face the administrators, faculty members, and students of every public university in the nation.

CHAPTER IV

SOME SUGGESTED DIRECTIONS FOR RESEARCH

This report attempts to suggest some of the issues arising out of the Berkeley controversy of 1964-65 on which scholarly analysis and further empirical study seem indicated. Clearly, issues of many kinds may be seen as "arising" from a single set of complex events. Our hope is not for comprehensive coverage of all such issues, but for useful preliminary analysis of several sets of interrelated issues, in the areas we have called policy, law, organizational analysis, and socio-legal inquiry. Even within those rubrics the issues presented are not exhaustive, but rather are suggestive of directions which social research might profitably take under the stimulus of these events. It may be helpful, however, to comment briefly on each of these four kinds of issues, to clarify the sort of research being suggested.

Analysis of Policy Alternatives

The issues of "policy" raised here presuppose no specific, articulated theoretical perspective. They are practical questions of institutional governance which face--or may soon face--the significant participants at every U. S. university. The form in which these questions arise is normative: What should the university's goals be? What means are legitimate to pursue those goals? Who should be encouraged or permitted to participate in university government, and in what ways?

The normative context should not, however, disqualify such issues for the attention of university scholars. In the first place, the means and preconditions for achieving a stated goal or value often can be analyzed usefully without the analyst's subscribing to the value itself.[188] Such analysis is important to academic life today. The FSM controversy made clear again what is typically forgotten: that university scholars, administrators, and students all too often assume there is some broad consensus about the goals and means appropriate to the university--and thus neglect to discuss them. The "free speech" crisis revealed little consensus at any level in the University of California about either the operative goals the University should be pursuing or the means to be encouraged in that pursuit.

Moreover, any analysis of means-ends relations leads inevitably to questions of descriptive fact and explanatory theory: What are universities' policies and practices? How internally consistent are they? What premises of value and belief are implied by each? What range of alternative actions is open? What are the effects of choosing particular goals, allowing certain groups to participate in their pursuit, or adopting certain organizational arrangements? What relevant facts beyond the immediate context should be considered before a particular policy choice is made? Thus, beyond their capacities as participating members of a university "community," scholars *as scholars* can illuminate the discussion of policy questions by (a) describing existing situations fully and accurately, (b) examining their internal coherence, (c) analyzing the assumptions about persons and institutions inherent in differing policy positions, (d) clarifying the range of explicit and implicit positions involved, (e) exploring the potential results of pursuing alternative policies, and (f) bringing to light new and relevant facts.

There are problems of precision, and of potential bias, in addressing policy issues--especially in the heat of pre-decision controversy. But every choice implies *some* assessment of the relevant facts and alternatives. It is the author's conviction, reinforced by the events discussed here, that practical issues and social controversies should inspire theoretical and empirical inquiry of a fundamental kind, which continues beyond the heat of the moment. The interests in better decisions and in greater knowledge of society may both be thereby served.

Study of the Relevant Law

One set of fact-questions to which our attention is immediately directed by policy problems concerns the applicable legal statutes and judicial precedents. The legal context in which universities operate evidently is in a state of some transition, if not disarray, and is little understood or agreed upon by competent legal scholars. What are the legal boundaries of university discretion? How are they changing, and on what bases? These are questions without good, generally available answers today, and this fact had dramatic consequences in the Berkeley crisis.

It seems particularly important to explore developing areas of the law which promise to be most significant for universities. For example, the growing law of "private governments" seems likely to bring more areas of discretion in previously "private" or "public" but "autonomous" organizations under judicial review. This trend needs much further study in relation to universities.[189] We need to understand more about the legal justifications for judicial scrutiny or its rejection in this area--e.g., the role in legal decisions of university functions and interests, and the present viability of such doctrines as the university's status *in loco parentis*.[190] Universities' legal powers and duties of law-enforcement on their campuses need investigation.[191]

Much of this research can be accomplished by the traditional methods of case-and-statute analysis, honored in legal tradition. Some will require reading these materials for more than the case-decision and its minimal basis in the court's opinion. Other types of study will also be needed, however. In a time of transition, with the circumstances of cases and the decisions of courts both shifting, forecasting the future directions of change in the law is at once the most practical and the most intriguing of "legal" problems. Diverse sources of information on this score might be more fully explored by interested scholars--e.g., the briefs of opposing parties in cases involving university rights and obligations. Working lawyers' contrasting statements of university functions, of the applicable precedents, and of presupposed authority-relations should be expected to mirror the interests which they seek to uphold, and should reveal much about the juridical context of university life today. Questionnaires and interviews on the attitudes of university trustees, administrators, faculty members, and students toward their respective legal rights and obligations might be equally instructive, especially if chosen from campuses where strong controversy now exists.

Such problems shade off imperceptibly into what is here called "socio-legal" analysis--the study of the law's relation to other social institutions and processes. These concerns are discussed more fully below.

Theoretical Perspectives

We have suggested that analyses of policy issues and descriptions of past and present practices can be useful for practical ends, while informing and stimulating disinterested scholarship. But systematic study of underlying social structures and processes should not be content with such approaches; it should depart from and return to articulated theoretical perspectives which promise explanatory inter-connections going far beyond the immediate events at hand. The division between these extremes is never complete, of course: Every analysis and description implies some conceptual framework (of greater or lesser coherence), and much of social theory is still fragmentary and poorly articulated today. However, the distinction is still useful.

The earlier parts of this report attempted to approach the Berkeley events through selected "practical" issues (those of policy and law), to some degree in the way that these arose during the intense public discussions of the time. The present section turns to two broad analytic perspectives within modern sociology, and suggests ways in which the same events have specific theoretical relevance.

"Organizational" analysis. One perspective concentrates on the observable patterns of authority, influence, and support in a social organization.[192] Such analysis tends to focus on the relations between the stated goals and the authority structure of an organization;[193] between the "organization chart" and the informal interactions of individuals and groups;[194] between sources of support for particular activities and the services rendered to outside "publics";[195] between the occupational roles of organization members and the social values which their actions help to fulfill;[196] and so on. Concepts fitting generally within this perspective (e.g., authority) were implicit in much popular discussion of the Berkeley controversy, and explicit in some of it. For example, there was much disagreement about "flouting" of authority by the FSM, and alleged "abuses" of authority by administrators; similarly, the proper spheres of authority of faculty members, administrators, and student representatives remain a matter of much concern on the campus. The suggestion here is that such discussions be refined analytically and related more explicitly to organizational theory as a basis for further study.

"Socio-legal" inquiry. A second perspective also concerns itself with some of these same broad problems involving concepts such as authority; however, it focuses more closely on rule-making and -enforcing processes as these relate to the spontaneous and changing patterns of social conduct and belief. Among the many interests of the developing "sociology of law,"[197] special attention is given here to such problems as the common characteristics of attempts to govern by rules: the relation of shared "moral" or "political" judgments to formal rules and their efficacy; the extent of reasoned justification for specific acts of authority; the applicability of traditional legal concepts and traditions to large-scale administrative organization; etc. A special relevance is suggested for the developing theory of "private government," both for its relevance to the larger legal system and for the possibilities it holds of undergirding emergent "legal" systems within large organizations themselves.[198]

Other possibilities. The choice of these two theoretical perspectives is not meant to imply that others do not hold equal promise for fruitful combination with the study of modern universities. For example, expanded study of the personal characteristics of students and others at universities of differing character is an obvious need. Such work, using personality theory as a basis, has already been extended to include FSM participants by Paul Heist and others.[199]

Similarly, the student protests have given new attention to the effect of institutional position in a formalized bureaucracy, and more broadly of social roles in general, on perceptions of what is true, right, reasonable, or even relevant. The differing positions of FSM and administration suggested widely diverging views on the parts played by group interests, reason, good will, and power in social controversy, and these differing views were highly consequential for the flow of events.[200]

Other examples might be given, but even these suggestions run far beyond the competence of this report. They are mentioned here to encourage their exploration by those with the competence to pursue them.

Comparative Studies of University Governance

Cutting across the issues suggested above is a dimension of social research that needs much fuller exploitation in this country; comparative study of differing historical, cultural, and organizational patterns.

Historical comparisons are needed in greater depth and precision on the patterns of applicable law, internal organization, "political" influence, and social functions of U. S. universities and colleges. Work such as Rudolph's The American College and University, and Hofstadter and Metzger's more intensive The Development of Academic Freedom in the United States, mark useful and insightful beginnings.[201] Much more emphasis is needed on the role of the student as U. S. institutions have developed from their early collegiate forms and origins, under the impact of European models and indigenous demands. Student participation in rule-making and enforcement, and the "freedoms" and prerogatives of students as such, need special attention. Some of this attention is implied by current efforts of the United States National Student Association, Committee "S" of the Association of American University Professors, and others.[202]

Cross-cultural and international comparisons are especially called for, to broaden our presently available knowledge of alternative patterns in university governance, both external and internal. Emphasis might be placed on cultures which provide key reference points for the U. S. experience. For example, we need much closer study of the German universities which have provided such important models for the research-orientation of the modern U. S. university. Also, Germany has a highly developed framework of statutory control over universities, within which much freedom for both faculty and students is said to exist. Closer examination of the way this system developed and operated in different historical periods is needed; few competent works are presently available in English translation.[203] Also, study of the internal government and external control of Latin American universities seems clearly indicated. The Latin American model is frequently cited as exemplary both of strong "political" involvement in administration and of students' political "sanctuary" from outside police. It is also widely criticized in this country as an example of politics at the expense of academic quality. Again, solid information is needed to replace sketchy accounts. A third obvious starting-place for such research is in the rapidly growing universities and technical institutes of Russia. A fourth is in the new nations of Africa and Asia, where establishing a "university" stands high on the agenda of every development-minded government.[204] In each of these areas, the effect of the form of university governance on academic excellence, as well as on political liberties and participation, should be examined against the indigenous cultural background. The experience of visiting U. S. scholars with such diverse cultures and institutions is growing rapidly; perhaps better advantage might be taken of it.

Finally, a third set of comparisons suggests itself: contrasting the patterns of governance in universities and those in organizations with other formal goals or traditions. At Berkeley in the past year, the rhetoric of controversy has been rich with organizational metaphor, and some of it has inspired new insights. The modern university has been compared variously with a happy family, a business corporation, a "company town," a democratic polity, a voluntary mutual-benefit association, a custodial or correctional institution, a special-function government agency, a "fourth branch" of the government, and so on. Comparing such organizational forms with present university patterns of authority, influence, and support might be pursued more seriously with real benefit. This is particularly true because of the tendency for courts to use such metaphors as partial bases for decisions reviewing administrative actions. But it is also suggestive of basic patterns in modern social structure.

University Forms and Functions: Organizational Issues

This section approaches the Berkeley events from a specific theoretical perspective, that of "organizational analysis." In the first part, certain general and particular problems of university authority-structures are examined. The second part concentrates on issues surrounding the interaction of universities' goals with the pressures (internal and external) of organizational life.

The Forms of University Authority

Much student and faculty criticism of the "multiversity" has centered on its organizational structure or form. A major focus has been the charge of impersonalized, autocratic "bureaucracy." The very word "bureaucracy" has become an epithet in the popular vocabulary of today, and it was used effectively as such in the Berkeley context.[205] But the most famous analyst of bureaucracy, Max Weber, intended only to describe a particular form of organization, said to have major advantages as well as disadvantages.[206] Other usage takes the term as roughly coextensive with "large-scale organization," or with "administration."[207] These various ways of using the term, and the appeal of the general notion first delineated by Weber, have tended to dominate much of the study of formal organizations in this country.[208]

The problem of bureaucratic organization in universities has received some attention from social scientists in recent years, but it needs much further exploration.[209] Even at a quite general level, questions such as these need intensified study: How bureaucratic are large modern universities? What, precisely, is meant by "bureaucracy" in this context? What specific areas of university activity tend to be bureaucratically organized? Does bureaucratic organization have distinctive value for the efficient performance of all social functions, including those of universities? What criteria of efficiency are implied? What are the inherent disadvantages of bureaucracy, and how do they affect the specific functions of universities?

Other foci in the analysis of organizational structures have special relevance, however, for universities in particular. Some observers have emphasized the traditions of "consensual" or "collegial" authority shared by university faculties (especially those with strong "academic senate" organizations, like the University of California), and the tendencies of this form to break down under certain increasingly commond conditions.[210] At the same time, there is a growing realization that still a third principle of authority operates in universities, as in other organizations which depend strongly on esoteric knowledge for their functions--the principle of certified expertise. That is, the possession of hard-to-get knowledge carries its own "authority": no one can "validly" second-guess an "expert's" judgment except a colleague in his own narrow field of specialization. This "professional" authority, in turn, tends to carry its own "halo" effect, and to affect relationships outside the expert's special field.[211]

The complex interplay of these types of authority was highlighted by the recent events at Berkeley. For example, the weight of the "collegial" decision by the Berkeley faculty on December 8, 1964, (concerning on-campus expression) clearly carried great weight with other members of the University, including its administration and Regents. Yet the Board insisted on the continued formal delegation of its "ultimate authority" over student discipline to the hierarchically ordered administrative staff headed by the President. Also, the problems of reaching consensus among large numbers of independently oriented specialists on the faculty were made doubly apparent during the Berkeley faculty's collective attempts to deal effectively with the University's crisis. The creation of a new Emergency Executive Committee following December 8, and subsequently of a standing Policy Committee for the faculty, may be seen in part as results of these strains.[212]

Again, even at a very general level there is a need for more clear and comprehensive analyses of such problems. What forms of organization, authority, and influence appear in the university besides the "bureaucratic"? What are the historical sources and principal functions of each type--and the inherent strains and complementarities among them? How are these diverse forms of authority reconciled in the official rhetoric of universities? How well is the rhetoric approximated in practice? What trends in university authority structures appear, and what are their probable effects on the interests of the diverse status groups within the university?

Ambiguity of formal authority. We have suggested that the *operative* authority structures of universities are complex and little understood. On examination, however, it often turns out that even the present *formal* authority structure is not clear. For example, it has been pointed out that no general, widely available codification exists of the University of California's official policies or formal structure.[213] In specific areas, such as the authority of the organized faculty as distinguished from the administration, there is much ambiguity.

In the words of the *Byrne Report*:

> The relationship between Campus Administrations and the Divisions of Academic Senate has long been confused, ambiguous, and a sporadic source of conflict. In some areas the Senate is a legislative body making basic policy, which the administration then carries out. In other areas, the administration makes basic policy, and the responsibility for implementing it is left to faculty committees, either

> appointed by the administration, appointed by the administration with the advice of the Senate, or appointed by the Senate itself. In still other areas, the administration makes policy and also attends to the problems of implementing it.[214]

These facts raise a familiar, but central, issue of organizational analysis: the interplay of formal and informal social relationships in the operation of formal organizations.[215] In the face of considerable ambiguity about who has authority to do what, how does the university actually operate? Whose effective authority is increased by the existence of formal ambiguities? What are the informal roles of authority, of reasoned discussion, of implicitly shared values, of the various status differences among groups in the university? What are the foci of informal authority, value-sharing, and status distinctions in today's university as compared with other formal organizations, and with the colleges and universities of the past? How do these things differ in the universities of other countries?

Further: Are university authority-relationships generally becoming more formalized and unambiguous? If so, in what ways? What forces impel this movement? Aside from the question of whose formal authority is increased or decreased, is increased clarity of authority an unalloyed gain? Are "flexibility" or the substantive relevance of interactions necessarily reduced when relationships become unambiguous?[216] Is formalization the only route to clarity? In the present makeup of university life, what interests are likely to emerge as dominant if formality and/or clarity of authority-relations is increased?

These questions arise directly out of the practical confrontations that beset the Berkeley campus in 1964-65. But they are of basic theoretical relevance to the study of formal organizations generally. They gain added importance if, as many think, a delicate balance between formality and personalized "community" is crucial to the quality of university life.

Mass organization of university life. Size is the trait most frequently seized upon to explain the ills of the modern university. Readers are familiar with comments on the new scale of higher learning in this country: Giant campuses serve multitudes of students. A single campus's faculty numbers more than a thousand, and assorted "professional research" staff members comprise hundreds more. Large lecture classes, large academic departments, mass record-keeping, and campus-wide "student personnel" agencies are the rule rather than the exception in today's large public universities. Thus "size" is an easily observed characteristic. It is frequently given credit for creating impersonality, unresponsiveness to individual needs, lack of student-teacher communication, and other problems with which universities are charged today. It may be time for a closer examination of the question: which "ills" are necessarily associated with size in universities, and which are products of other factors--such as organizational forms that emphasize "economies of scale" at the expense of other values.[217]

Each form of organization has its advantages and limitations; each serves some functions better than others. The present mass organization of the public university presumably did not arise by accident. We need to understand better its inherent advantages and disadvantages, and its evolution as U.S. college and university enrollments have burgeoned over the last half-century.

Why have single "universities" grown to enrollments of ten, twenty, thirty thousand and beyond instead of more numerous, smaller, and "separate" institutions being created? Do economies of scale in the use of money, manpower, facilities, or other resources alone explain the growth of large classes, campus-wide registration procedures, or multi-campus administrative controls? What are the educational and cultural advantages of the large campus? What specific groups and interests are served by the present structure of university teaching and research--for example, how is the present organization of large classes and teaching assistantships related to the subsidy of graduate study, or of faculty research? To what extent are faculty or administrative pressures mobilized to maintain particular elements of the present structure? How are such pressures, if they exist, brought to bear? Answers to these and similar questions would seem basic to an understanding of organizational forms and their functions in the university today.

New "rules of access" on campus? Student protests against the multiversity as a "factory" have been coupled with demands for a "more human" scale of organization, breaking large-unit structures down so that repeated face-to-face interactions are possible among students, faculty members, and any others who must be involved with instruction and research. Some students point out that the "rules of access" to faculty and facilities in today's large university favor the graduate student over the undergraduate, upper division students over freshmen and sophomores, those with chosen majors over those who seek more breadth of study--and, in general, students who need the least individual attention from the university over those who need it most. Some faculty at least partially agree. For example, Burton Clark has pointed to the priority of access and convenience which a large, central campus library gives to the specialized scholar, at the expense of the undergraduate student who must use "reserve" books at times of peak demand.[218]

Not all faculty members or administrators at Berkeley accept these criticisms. Some see present arrangements as properly emphasizing personal initiative, self-reliance, and competition for academic excellence among students. Access to libraries, to the scarce time of faculty members, and to individualized academic programs must be earned, they believe, by the kind of reading and writing which demonstrate students' readiness and motivation to make good use of these precious commodities. Many agree with some criticisms of the large university's impersonality, but hope to combine a more personal scale of teaching and learning with the advantages of the large urban campus.[219]

Thus the student protests at Berkeley have intensified the search for ways to achieve new, smaller "clusterings" of students and faculty with shared interests, and to make University facilities and services available to them on more personal and individualized bases. These concerns are not new in the University of California, however: its new campuses at Santa Cruz and San Diego are designed around clusters of small colleges, each having its own faculty and special facilities for student residence, classrooms, libraries, and recreation, as well as a share in the use of campus-wide facilities. Leadership in encouraging such new designs was taken by President Clark Kerr beginning some years ago. A new Undergraduate Library is being planned for the Berkeley campus. Several years ago, Martin Trow urged making Berkeley's academic departments more viable centers of student identification by setting aside common rooms for students and faculty near departmental offices. He has also urged systematic participant-observation of use patterns in residence halls, and the design of such facilities to support the social groupings and personal interests which the patterns imply.[220] Plans to locate classrooms and faculty offices in student residence halls on established campuses are being considered by University officials.

Other proposals are being considered and discussed as possible "educational reforms" at Berkeley. Some have suggested dividing the College of Letters and Science into broad subject-matter divisions, with more authority centered in the faculty and administration of each division. New curricular experiments have been proposed for a measure of autonomy. One of these, the so-called Tussman Plan, began instruction in September, 1965, for 150 students with five faculty members; it emphasizes interdisciplinary study of one historical era in each of four semesters. A variety of experiments, such as a small "St. John's College at Berkeley," was urged for faculty consideration by Acting Chancellor Martin Meyerson.[221] Others have suggested that the entire lower division curriculum be made an autonomous unit, with its courses redesigned and integrated more carefully to produce a common core of liberal studies shared by all undergraduates.

Events such as these raise rare opportunities for research concerning university organizational forms. The colleges at Santa Cruz and San Diego, and the Tussman program at Berkeley, are predicated on expectations of significant changes in student-faculty relations, with assumptions that students' educational and cultural development also will be bettered. Such experiments might well be systematically observed from the start by outside scholars, to determine what patterns of student and faculty relations actually occur, and how these are related to such indicators as students' perceptions of impersonality on the campus, students' scores on objective tests of academic achievement, and so on. Control of such variables as the values and personal characteristics of faculty and students would be crucial and somewhat difficult, of course. But it seems important not to lose the opportunity for comparative study of such major innovations in large-university organization from their beginnings.

In addition, case studies should be made wherever possible of the decision-making processes resulting in creation or disapproval of such innovations in large universities across the nation.[222] Such studies should suggest the interests and values on the large campus which lead to substructural innovations. They should reveal also the values that compete with those sought by the experimental programs--and which thus may operate to maintain the status quo or energize trends toward still other organizational expedients.

Patterns of actual use in libraries and other university facilities already are available on some campuses. These data might profitably be systematized and compared with the functional requirements of the diverse status groups in the typical university, to reveal the interests which are being served by these facilities at the present time.

Problems of the university "system." The student protests at Berkeley gave major impetus to still another critical development in University organization. During discussions of the Meyer Committee proposals in the spring of 1965, the individual campuses' autonomy of Regental and Universitywide administrative controls became an important issue in public discussions. In the aftermath of the year's crises, the University of California began its second major "decentralization" of administrative authority to the campuses since Clark Kerr became President in 1958.[223] Chancellors of individual campuses are being encouraged to decentralize administration within campuses as well. However, there is no general agreement, or even understanding, about the bases or the specific purposes of the "decentralizing" changes under discussion.

Some persons contend that campus administrators need more freedom of discretion to exercise their administrative authority in the diverse circumstances of the various campuses. In fact, the decentralization proposed thus far would increase the Chancellors' formal discretionary authority by new delegations from the President and Regents. Other persons believe strongly that faculty members should be given more authority in all the operations of the campuses, as the primary "experts" on the conditions which best encourage the discovery and dissemination of knowledge. (The Academic Senate has been "encouraged" to consider its own internal reorganization currently also, but no formal changes in its authority have been suggested so far by the President.) Still other persons, including the leaders of the FSM and associated organizations, have called for decentralization of authority within the University to maximize the "consent of the governed" concerning the conditions of their governance. The appeal here is to the "expertise" shared by all those who must live with the consequences of organizational policies, which regulate their daily activities. The need is urged to develop a "community" characterized by formal authority shared more widely among all campus groups, including students.

Further analysis and descriptive study are needed to clarify the values, conflicts, and results of these overlapping but separate bases for decentralizing authority.

A second issue is closely related. The official statements of the University of California emphasize the blend of "unity and diversity" which is sought in the University's operations.[224] Some faculty members have objected that "unity" in this context means uniformity of administratively imposed regulations across circumstances so diverse that they cannot fairly be lumped under a single rule.[225] It is generally conceded that there are some areas in which uniformity is desirable throughout a university. But there is no clear agreement on what matters should be uniform, and why.

At present, the University has uniform personnel policies, salary scales, student admission policies, broad student-conduct policies, and so on. But campuses are free (within limits) to vary their internal organizational forms, to implement broad student-conduct policies with locally tailored regulations, to exercise some discretion in admission when too many qualified students apply, etc.

In the area of substantive academic programs, the campuses are officially encouraged to develop diversity systematically, so that complementary courses, degree programs, approaches to subject matter, and faculty competences will be offered the people of the State by various parts of the University. This requirement of complementarity, itself, is seen as a burdensome restriction on occasion: Campus leaders often wish to develop a program duplicated nearby because it is expected to have great demand in the future, because it seems important for a well-rounded campus offering, because of special opportunities to acquire facilities or hire distinguished faculty--or simply because the program is prestigious. Some administrators therefore argue that central restraints are necessary to discourage uniformity from developing "spontaneously" among the campuses which serve a single state or locality.

Such problems gain importance as parts of a broader pattern prevalent today in public higher education. Recent years have seen a considerable growth in the degree of statewide "coordination" (i.e., administrative control) of budget requests, admission policies, programs, and other aspects of public colleges and universities. Questions of how much coordination should be required among institutions, how this coordination should be accomplished, and what values are served or sacrificed, are of immediate and practical consequence in almost every state. But the decisions being made have proceeded on the basis of comparatively little research, and on necessarily inadequate consideration of the fundamental issues at stake.[226] With nine campuses and over 100 separate research stations under its charter, the University of California for many purposes resembles a "system" of universities as much as a single university. The Byrne Report to the Regents recommended that each University campus be chartered separately within a "commonwealth" of universities--a move toward less central "coordination."[227]

The evolution and blending of "single" universities and intercampus "systems" of control needs fuller description in its own right. However, the focus suggested here is analytic and functional as well as descriptive. We need to go beyond general terms such as "unity and diversity" to examine at a very specific level the values, activities and interests at stake, in each major type of decision for uniformity or diversity of programs or policies. Moreover, we need careful empirical study into the relation of sameness and difference to central and local determination on particular issues. Like many others in social science, these questions are important both for our basic understanding and for practical decisions about organizational life.

University Aims and Their Organizational Embodiment

A related but separable set of issues arises if one focuses on the institutional goals, purposes, or functions of the university, rather than its organizational forms. The different functions and interests called upon during the recent Berkeley controversy were discussed in Section III. But three further views of university goals may be suggested here:

Goal-definition: problems and consequences. Like their authority structures, universities' goals--formal and informal--tend to lack either clear, specific referents or generally shared meaning.[228] The rhetoric of university educators generally runs to quite abstract formulations, and tends to include functions or activities not specified in legal documents. President Clark Kerr, in his much-discussed Uses of the University, states the goals of universities thus:

> The ends are already given--the preservation of the eternal truths, the creation of new knowledge, the improvement of service wherever truth and knowledge of high order may serve the needs of man. The ends are there; the means must be ever improved in a competitive dynamic environment. There is no single "end" to be discovered; there are several ends and many groups to be served.[229]

Many other formulations have been suggested. Some scholars would add "responsibility for fostering good taste and human understanding," or would emphasize "enhancement of such qualities as independence of judgment, critical thinking, creativity, freedom from irrational prejudice," and the like.[230] At such a level of abstraction, there are obvious potential difficulties in determining the "fundamental purposes of a university or the relative importance of different activities in contributing to those purposes."[231] In other words, the operational definition of the abstract ends of the organization, in terms of concrete activities by persons who perform its functions, is by no means easy.

The abstract character of statements about university goals produced much complex rhetoric at Berkeley. This was particularly true when University functions were called on to legitimize specific rules of conduct or structures of governance. In a time of conflict, grand abstractions may be given whatever meanings the combatants find useful at the moment. This led some students cynically to conclude that only power-relations count in organizational life, at least where rather specific values are not shared implicitly, and that formal goals or ideals only serve to rationalize preexisting interests. Still, all sides in the Berkeley disputes invoked ideals or goals or missions of the University in support of their own positions--usually with apparent sincerity.

As with formal and informal structures, students of social organization have wrestled for some years to clarify the relations between explicit and implicit goals, including those of the total organization, its subgroups, and its individual members. Some have declared it a central function of leadership to mobilize a working consensus about a set of institutional goals.[232] In the modern university, evidently, this is a job that takes some doing, and the problem deserves much further study.

A part of the problem, as the term "multiversity" implies, is that the goals of today's large institution are multiple in almost any formulation, even an abstract one--e.g., teaching, research, public service. The complementarity of these functions usually is assumed, or is asserted because all depend in important degree upon specialized, esoteric knowledge, or expertise. The fact that each of the three stated functions competes with the others for scarce resources and time would seem undeniable, but this is usually played down in official rhetoric. Again, some persons argue today that performance of each function could be improved by the familiar device of a further division of labor.[233] But this is denied on the ground that research and teaching are intimately related and interdependent. Similarly, many present-day critics urge that teaching be given more reward and emphasis in universities, relative to research and expert consulting. The reply usually is made that good teaching is undefinable, that academic freedom forbids tampering with what goes on in the individual teacher's classroom, or that teaching is over-emphasized (without notable excellence) in most undergraduate institutions in this country.[234]

These issues cannot be resolved solely by organizational analysis, obviously. Difficult questions about human learning alone pose great obstacles in any discussion of teaching. But some important organizational problems are involved: What is the actual distribution of activities, in the modern multiversity faculty, among the diverse functions which the institution espouses? What special interests of status groups inside and outside the university are served by the present intermixture and lack of concreteness in university functions? Whose special interests are slighted? Why is there no organized "profession" of advanced teaching to support that function in the university, as specialized research is supported by the associations of scholars in each academic discipline? How well do the special values shared by university intellectuals harmonize with the purposes of teaching young minds? With the demands of organized research or expert consultation tailored to the requirements of industrial or governmental organizations?[235]

More broadly, better analysis is needed of the functions of ambiguity in organizational goals. Some educators see the broad umbrella of abstractions under which universities operate as a major safeguard of substantive relevance, creative innovation, and adaptability to changed circumstances. Within such a house, the argument runs, many mansions may rise. And the pragmatic criterion of "what works" is a better one for intellectual activities than any formally specifiable definition to which academic life might be made to conform. Some may see the modern university becoming, like the medieval Church, all things to all men. If that happens, in one view, it will be in response to "real" and legitimate needs of society--better met by creative intellectuals on university faculties than by many another, more easily "accountable," organization.

Such issues go to the heart of organizational life in the university, invoking the essential problems inherent in 1) its concern for new and fundamental knowledge, 2) its complex relation to the society which provides its resources and is affected by the results, and 3) the relation of the abstractions by which it lives to the structures of power and authority on which so much attention is focused today. Much further analysis may be necessary before useful empirical questions can be posed. But these issues should not be left by scholars to popular discussion and personal opinion.

A "protest industry"? Beyond such general questions about formal goals in the university lie issues of specific--often implicit--purposes with which the institution is inescapably involved. By all odds the most troubling of these is the function of keeping alive social dissent and criticism.

It is often said that a major purpose of the university in a free society is criticism of that society for its own improvement. In the view of some educators, this means more than the provision of a "market place" for ideas. It means more than a haven for "academic" research by faculty of certified "competence." On the other hand, it does not mean indoctrination in a specific ideology, subversive or otherwise. Instead, it means the systematic education of both students and faculty in skills of intellectual analysis and criticism, which are taken as central not only to human individuality but to betterment of the common lot of mankind.

In this view every society, no matter how benign, has its injustice and corruption and misuses of power. Any university worth its keep, therefore, must create dissatisfaction with society in the very process in helping students to think independently. It does this when it makes them aware of men's aspirations throughout history, and when it sharpens their intellectual capacities to distinguish practice and principle, deeds and promises, consistency and contradiction. Wherever students progress through higher learning complacently acceptive of society as they find it, so the argument runs, just there has the university failed of its highest purpose.

A university fulfilling that purpose must necessarily be seen by much of its society as a seedbed of dissent and challenge--sometimes to that society's most cherished institutions.[236] To tolerate that seedbed in its midst, a society must be deeply convinced of the value of its criticism, either against injustices lingering in the present or for the sake of future generations in a rapidly changing world.[237] Thus the university compounds the social dangers inherent in free speech: it teaches intelligent youths how to make use of speech to powerful effect, by putting them in contact with the skills of logic and criticism and the materials of human history. The university produces its own dissent--and then both the society and the university must somehow live with it.

Such an assertion of the university's function seemed implicit in much of the FSM's protest, although it was explicit in only a few public statements.[238] Clearly, FSM leaders felt themselves specially qualified to see the hypocrisy and contradictions in present society--and in the modern multiversity. But their challenges to University policies emphasized constitutional grounds, and the special evils they perceive in today's bureaucratic social structure. In part, this may be because many FSM members believe the typical university today neglects education in understanding, analysis, and criticism, in favor of routine "requirements"--designed as preparation for over-professionalized graduate schools that will train them as non-dissenting "manpower" for industrial and governmental employment. They believe that their education in independent thought has come largely from extra-curricular sources.[239] The FSM's actions and arguments were consistent with the view of a university's functions suggested here.

Students active in the FSM protests have tended also to glorify the university's function of social criticism generally--but they see students as its only social base in the academic world. In their view, most faculty members and administrators alike have been co-opted into a "system" of economic rewards and social restraints that stifles their recognition of manifest contradictions in current American society. These students see themselves and their fellows as "outside" this system. (This also is their major link with members of economic and ethnic minorities.) They are therefore peculiarly able to see and declare "the system's" pervasive and malignant effects. In other words, the students know that their conclusions from the exposure to higher learning differ from those of most of the "maturer" intellectuals in the university. But they believe the reasons do "maturity" little credit.

Many university scholars would, of course, deny the *legitimacy* of a university "function" as outlined here. For example, it is often said that universities must (and most presumably do) teach "responsible" restraint in the *expression* of social criticism, as well as skill in the use of critical intelligence. Some faculty members emphasize the affirmative "responsibility" of scholars to demand respect for fact, and careful attention to the evidence for assertions, in all the utterances of a university's members. But these are largely normative arguments, which do not deny the logic of events. Many in the University of California today would agree that the FSM protests involved considerable intellectual content, and that skills of analysis and criticism were abundantly employed by the movement's leaders. Few, after the past year at Berkeley, would deny that this process has helped to create problems for the University.

It also should be clear: the view described here does not imply that dissent fostered by university education is benign for a particular society. Instead, the argument suggests that the maintenance of a "true" university would be highly destructive for some societies--especially those having most to fear from the critical use of sharpened intelligence. Prominent among them we would expect to find societies with the widest gaps between the ideals espoused and their pursuit in practice, the most damaging internal contradictions to be discovered. Such gaps, in turn, some would insist, can be the product of high aspirations and well-intentioned but modest performance as much as of hypocrisy and conspiracy among those who hold the balance of social power.

At the moment, however, our focus is the university: the problems created for an organization when it produces its own dissent. If this function of university education has any *empirical* validity today, then we would do well to examine the special imperatives it may produce. For example, an organization which tolerates or encourages the function of unrestricted critical intelligence within it may have to meet especially high standards of consistency between principle and practice, if it is to avoid internal conflict. Alternatively, it may have to depend for its stability on lack of moral concern among those whose intelligence has been sharpened --the much discussed political apathy of most U. S. students, even today.

It may need to provide its members with incentives (or other good reasons) to ignore the imperfections which their intelligence tells them exist. It may have to teach them, for example, that imperfections exist everywhere, and suggest they always seem exaggerated to young people just learning to criticize. It may have to keep trainees in a special subordinate status (i.e., "student"), where criticism of society or the institution are defined as illegitimate until certified "competent." Or there may be other means to reasonable stability in such an organization.

Whatever the answers to possibilities such as these, it is suggested that analysis of this university function in modern society needs far more attention than it has received. Such analysis should of course lead to, and be refined by, empirical observations of university student protests.

Organizational imperatives, educational goals. Every formal organization is at once an "economy" and a group of interacting persons.[240] As an economy, it must assemble resources (usually money, material goods, and human talents); these must be allocated to specific functions and the activities of individuals and groups, along with supervisory authority and responsibility for performance. The typical problems here are adequacy of support and operating efficiency--the securing of "enough" resources, and creation of a pattern of allocation which makes "optimum" use of those resources in pursuit of the organization's stated objectives. As interacting persons, however, the organization's "members" always vie with one another and with the outside "publics" which supply its resources, for the operational definition of the goals. Thus "pursuit" of the goals takes on concrete meaning through the activities actually performed in its name.

In addition to stated goals, a formal organization usually has some formally specified sources of economic support--e.g., the dues of members or the stock-purchases of shareholders--and some formal structure of accountability to those sources for the proper performance of its functions. It may also have a more or less specific internal structure of authority, related both to goals and to support. In the organizational pattern which dominates the U. S. university scene, goals typically are quite vaguely defined; thus great freedom is left for the play of informal social and economic forces on their operational definition. As we have seen, the internal authority-structure often is ill-defined in formal terms. Now we focus on the fact that the formal accountability-relation to sources of support also is purposely blurred in the U. S. university, and in its turn is modified in ambiguous ways by traditions and other informal forces.

In the usual rhetoric of current American academic life, the lay governing board only technically wields "ultimate" authority over all internal operations. It is expected to function primarily as a "buffer" between the university and the external community.[241] "Restraint" is expected of the board on internal matters generally. Core areas such as degree requirements, content of courses, and instructional methods are supposed to be left almost solely to the assembled faculties.

In fact, this may not be the modal pattern. But it is said to prevail in the "best" universities,[242] is given lip service in many more, and is held as an ideal in most. In this highly ambiguous situation, the opportunity for informal variations in patterns of actual influence by governing boards and outside support-sources is great. Also, certain functional areas have been progressively released from operational control by faculties and assigned to administrative specialists--e.g., admission standards, student discipline, and "student personnel services" generally.[243] As a result, the impact of external forces on these areas is thought by many to have increased concomitantly, taking effect both through the "recommendations" of governing-board members and by means of outside "heat" brought directly on administrative officers.

Besides ambiguity of goals and accountability-relations, universities have other special characteristics. In several ways, the university approaches being a kind of limiting case of relations between social organizations and their sources of economic support.

Arguably, the university's central goals imply special requirements: first, for freedom of internal determination. For example, the tradition of "academic freedom" has grown up to guard intellectual inquiry and discussion against the imposition of current orthodoxy from without. Even within the university, the importance of specialized expertise has necessitated leaving review of a professor's performance largely in the hands of a few colleagues, who alone are thought to have the knowledge necessary for meaningful judgments. The FSM and its supporters have urged the importance of an atmosphere of "openness" to all study and expression for students as well as for faculty members. Second, university goals may imply special requirements of personal interactions among its participants, and special community of values. Teaching, it would seem, has its inescapably personal dimensions, especially if it is to involve more than the transmission of bare "facts" about the conclusions of past research. Also, a community of teachers and learners who are involved with the frontiers of knowledge and of meaning may be dependent for its internal stability upon some greater sharing of values than today's multiversity contemplates. Third, the increasing importance of formal intellectual training for effective political expression may suggest special needs for universities to maintain relatively more democratic, less hierarchically directed forms of governance than might be permitted to other organizations.

Universities' functions also are widely acknowledged to be of increasing importance to the rest of society. The tasks of manpower training for a complicated economy, and of research which undergirds technological advance, both are largely university monopolies, despite marginal efforts in government and industry. The economic growth of a society and the economic opportunities of individuals equally depend on these functions today, even in the short run. In non-economic terms, the survival of historical perspective and traditions of free thought and criticism are also largely dependent on universities' activities. Thus the day of the university's isolation as an "ivory tower" probably is gone forever. Intensive interaction with the outside world is now inescapable.

Finally, as was suggested under an earlier heading, universities may tend inherently to produce critical dissent from the imperfections of present society. Thus universities demand special tolerance from those who must support their continuance, but who are largely satisfied with society as it is.

Such an analysis suggests that our understanding both of universities and of organizations generally could profit from greater attention to universities' ways of getting support, responding to the accompanying pressures, and accommodating those pressures by internal adjustments. Even very broad, analytic comparisons of university patterns with those of business corporations, voluntary associations, government agencies, and other types of formal and informal organization should be quite revealing.[244]

In addition, however, much more descriptive information is needed about the ways that universities and other groups actually do respond to their needs for outside support. For example, what are the typical modes of justifying requests for various types of support--in terms of specific services or general social functions, short-range or long-range benefits, etc.? How, in fact, do university representatives explain to donors and legislators the need for both generous support and substantial autonomy? Are there trends in the level of specificity and the substantive content of these explanations? What effects are these trends likely to have on the allocation of resources to the various university activities, such as teaching vs. research, graduate vs. undergraduate education, science vs. the humanities? How are these trends related to changes in external types of pressure such as growing industrial demands for applied research and relevantly trained manpower, or the device of employing specialized program analysts in government fiscal agencies?

As noted above, the official rhetoric tends to deny any but the most distant relation between support and internal goal-definition. Verification of this fact would itself be of considerable theoretical interest. But reexamination of this issue by closer study of the informal processes involved seems very much indicated today in any case.

In approaching this set of problems, much more systematic attention should be given to the roles of university administrators and trustees. Recent discussions at Berkeley have created new interest in the "marginal" roles of administrators and governing board members in "mediating" between the values and demands of those inside and those outside the university.[245] The legal authority of the governing board and the breadth of discretion and control allowed to administrators have been openly challenged by students, and now are being subjected to new scrutiny by faculty members, government officials, and private citizens.

It has again become apparent that there is little but rough anecdotal information, and even less agreement, on how administrators and regents do, in fact, perform their functions, or what those functions are thought to be. For example, there is no agreement on the necessity for administrators to have supervisory authority; students have argued that administrators should perform only "caretaking" and facilitative roles for students and faculty members.[246] The FSM charged that the Board of Regents acts not as a "buffer" against outside pressures but as agent of certain pressure groups, partly by embodying their values and partly by yielding to fears of their withdrawn support.[247] These charges were answered by assertions that administrative authority is functionally necessary to university goals, and that statesmanlike weighing of legitimate but competing values characterizes regents' and administrators' exercise of their broad discretion.

Research looking behind such arguments might take the following approaches:

1) The evolution of administrative functions in universities might be traced systematically: What has led to the growth of administrative roles in academe?[248] How have differentiations of function changed administrators' duties and authority? For example, are administrators being increasingly forced into exclusive concern with external university relations?[249] Are administrators gaining more control over some areas inside the university, and losing control over others? What are the backgrounds and training of persons recruited to administrative roles today, as compared with earlier decades?

2) The strains inherent in current academic-administrative roles might be explored further: What strains are produced by the responsibility to balance needs for university "self-government" with outside demands for accountability? By responsibility for regulating the conduct of intelligent students, whose skills of analysis and criticism are being newly awakened and refined? By hierarchical authority over faculty members--who combine great skill at criticism with largely anti-authoritarian values, distaste for administrative and political problems, and primary attachments to specialized academic disciplines?

3) Much more study might be made of the administrative subculture: How do administrators attempt to resolve their role-strains by patterned beliefs and attitudes about university life? What systematic differences of viewpoint are discernible between teaching faculty and

administrative officials on such questions as the meaning and relative importance of specific university goals? On the need for hierarchic authority? On the criteria used in allocating resources among university activities? On the legitimacy of various pressures from outside which seek to mold university functions? Are these differences related to other differences of basic value-orientation, between academics who are and those who are not recruited to administrative positions? Are such differences associated with long tenure in positions of coordinative responsibility generally (e.g., faculty committee service, departmental chairmanships, research institute directorships)? Are some positions associated with "non-faculty" attitudes more than others--e.g., external-relations roles, or those requiring coordination among academic disciplines?

4) Some of these questions might be adapted for members of university governing boards. Particular attention might be given here to attitudes about the legitimacy of demands for internal autonomy as against the interests and concerns of parents, taxpayers, and industrial or commercial groups. Still further extension of the inquiry, which might be of considerable interest, would sample opinions of general population groups about why a university should be given public support, and what kinds of controls should be imposed upon it.

Recent years have brought us some fascinating anecdotal accounts and preliminary analyses of administrative roles and their difficulties by present and former university presidents.[250] These books are rich sources of insights and of questions for further study. But they are beginnings. The need and the opportunity both are great for much more analysis and systematic observation of university organization and administration.

University Governance by Rules: Socio-Legal Issues

The "free speech" controversy at Berkeley has given impetus to an already growing scholarly enterprise: the study of universities as "private governments." Along with a general development of administrative law, there is today a developing body of legal and scholarly opinion that views the large, complex administrative structures of formally "autonomous" or "private" organizations (e.g., business corporations, labor unions, universities, etc.) as wielding "governmental" powers and carrying out governmental functions, which require that traditional problems of government be considered in assessing the rights and obligations within them.[251] Among the principal problems that arise are the scope and bases of administrative officials' discretion, the applicability of "due process" traditions to administration, and the character and sources of administrative authority. Study of such problems requires an intermixture of legal and sociological perspectives. Issues in each of these problem-areas were raised in vivid form by the Berkeley disputes. Some are discussed below, along with problems concerning the effectiveness of university "legal" action and the bases of demands for freedom on the campus.

The Scope and Bases of Administrative Discretion

As we have seen, the Free Speech Movement objected to the enforcement of specific rules of on-campus conduct by the University in 1964. However, the organization and its successors also have taken strong stands against the broad character of the University's rules, especially as to their generality and the broad discretion which they lodge in administrative officials. The FSM argued that the size and impersonality of the modern university, the apparent desire of administrators to preserve order at the expense of important freedoms, and the manifest political pressures from the outside community have made university officials unable to use discretion fairly in student disciplinary matters. The FSM thus demanded that constitutional standards of specificity and clarity be applied to University rules, and urged that jurisdiction over disciplinary cases involving political expression or activity be lodged in a committee of faculty members. On November 20, the Regents approved President Kerr's recommendation:

> That rules and regulations be made more clear and specific and thus, incidentally and regrettably more detailed and legalistic; and explicit penalties, where possible, be set forth for specific violations.[252]

Subsequent events resulted in University-wide rules' being kept broad and general, with authority or direction to the individual Chancellors to implement them with more specific regulations. A greater range and diversity of penalties was included in the President's rules of July 1, 1965.[253]

Even at the campus level, however, it has been argued that specificity and detail in rules is inappropriate to a university.[254] Such detail destroys much of the flexibility necessary for judgmental application of rules to diverse and unforeseen circumstances, it is said. Moreover, once created, rules are troublesome and time-consuming to change. Yet the students of later years may find them wholly unsuitable to the times.

Social bases of "parental" discretion. These complaints find parallels in scholarly discussions of the social context of developing legal forms. For example, one focus of student complaint elsewhere for some years now has been the legal doctrine that university authorities stand in loco parentis--a piece of judicial imagery that has allowed courts to approve the broadest kinds of discretionary rulings by university and college officials in student disciplinary matters. As noted above, some modifications of this doctrine now appear in the cases, and some scholars forecast further changes.[255] Moreover, social bases for such changes have been suggested; these call for much further study: How important is the Southern civil-rights movement in producing judicially imposed restraints which will modify the "parental" discretion of university administrators? As full-time administrative officials, rather than teaching faculty members, increasingly impose student discipline, how is the tenability of the "parental" analogy affected? What is the effect on the analogy of modern universities' great size, complexity, and impersonality? How relevant is the increased number of university students aged 21 years and over, with adult experience and responsibility for their own affairs? How relevant is the heightened importance of a university education for economic and professional opportunity, or the military obligation expected of 18-year-olds? What is the significance of long-term changes in universities' social functions--e.g., from general moral and cultural conditioning for a social and economic elite to more specific vocational and professional training for members of diverse social classes? Are judges or university officials more socially "competent" to establish the rights of students against universities' "institutional" interests in survival, economic prosperity, and general order?[256] How have such social factors affected legal changes in the discretion allowed administrative officials of other organizations besides universities?

Restraints in the task-committed organization. The concerns of university administrators over "legalism" and inflexible, time-consuming procedural mechanisms also have a meaningful foundation in the sociolegal literature, however. Like most other "private governments," the university is an organization charged with performance of a special function for society. Its main functions--the advanced education of growing sectors of the population, and the discovery and dissemination of new knowledge--are complex and demanding tasks which defy easy routinization and require flexible judgments adapted to changing circumstances. Fuller has pointed to the difficulty with which judicial organs assess the judgments of "marginal utility" required in the management of complex enterprises.[257]

In addition, Max Weber long ago pointed out that the growth of "legal-rational" regulation in human affairs carried with it disadvantages for the handling of particular cases. He saw that the growing "formality" of Western European law, with bureaucracy as the "pure" form of its administration, sacrificed "substantive rationality" in specific cases for the "legal certainty" which detailed and unambiguous rules make possible.[258]

Thus basic, not illusory, dilemmas are posed by the disputes illustrated in the Berkeley controversy over administrative arbitrariness and legalism. It would appear that the modern university provides a rich social laboratory for the study of socio-legal issues in this area.

"Due process" in the university. The desire to restrain University administrators' discretion early led FSM leaders to call not only for more clear and specific rules but also for a series of procedural safeguards in disciplinary cases. These safeguards they grouped under the general rubric of "due process," as represented in the Anglo-American legal tradition.

Within that broad rubric, FSM leaders at various times demanded the following guarantees: 1) a preexistent, "impartial" faculty tribunal, appointed independent of the administration, to have final authority over student discipline; 2) a deliberate and open hearing before provisional sanctions are imposed on students charged with violations; 3) prohibition of ex parte communications to or from the hearing committee; 4) adequate notice in writing of an alleged violation and scheduled hearing; 5) a clear statement of charges to the accused; 6) no selective or exemplary enforcement of rules (e.g., against leaders of a protest movement); 7) trial before a jury of one's peers; 8) a clear statement of the tribunal's jurisdiction (e.g., over matters concerning political expression or not); 9) charges based on preexistent rules that are specific enough to allow the accused's prior knowledge of his guilt, and are reasonably related to University purposes; 10) an opportunity to challenge the bases of rules which one is charged with violating; 11) suspension of University discipline while legal proceedings are pending on related charges, so as to avoid "double jeopardy" or "self-incrimination"; 12) no "bullying" by University counsel to admit the validity of charges; '3) the right to confront one's accusers; 14) the right to present evidence on one's behalf and to call and cross-examine witnesses; 15) counsel of one's own choosing at the hearing; 16) committee findings of fact and rulings in writing; 17) penalties reasonably related to the gravity of the offense; and 18) no subjection to "trial" on the unsupported testimony of a single administrative official.[259]

In an immediate and practical sense, these demands are the heart of the matter: they are attempts to apply strong Anglo-American legal traditions directly to the restraint of administrative actions. The Legal Advisory Committee report of December 14, 1964, at Berkeley indicated that for the want of "those institutional and procedural safeguards that are available to a defendant in a criminal court of law," the U. S. Supreme Court "has denied to administrative tribunals and other nonjudicial bodies certain powers to regulate the content of expression that have been given to the courts."[260] However, as we have seen, University attorneys have denounced the FSM "due process" demands as "pseudo-legalism"; other officials have simply declared them unworkable and undesirably "adversary" in character for a university setting.[261] More importantly, legal scholars on the campus have pointed out that no single, universal set of procedural safeguards is required by the courts in the name of due process; instead, the procedures allowed vary widely with the nature of the case. In this connection, some faculty members have proposed simpler, "fair hearing" standards for University use in student discipline.

President Kerr's new University-wide Policies, effective July 1, 1965, provide that campus regulations must be "in accordance with basic standards of fairness." Consistent with this, rules are to be "simple" and "appropriate to the nature of the case and the severity of the potential discipline." University violations may be disciplined "whether or not such violations are also violations of law, and whether or not proceedings are or have been pending in the courts involving the same acts." Student or faculty committees may advise the Chancellor on student discipline, but the final authority is his, except that expulsion requires approval of the President. The Chancellor "in his discretion, may immediately impose warning or interim suspension upon a student when circumstances warrant such action."[262]

Thus disagreements about the proper scope of "due process" in university disciplinary proceedings remain. Research by legal scholars already has been done on this subject.[263] However, it may not be amiss to suggest some questions which deserve further study. For example:

What is the pattern of procedural restraints on administrative disciplinary action in U. S. universities? How closely does this pattern follow the requirements laid down in U. S. legal precedent (a) for courts and (b) for administrative tribunals other than those of universities? What elements of "due process" have been required of universities by courts in the past?

What are the specific purposes of each major "due process" requirement imposed in the U. S. legal tradition, and how applicable is each to the university setting? Are some procedural restraints more important than others, for students in the large university? Are some less burdensome on university officials? What specific interests and values would be sacrificed if universities' discipline were made to conform more closely to legal standards of due process?

Finally: Are there changing social conditions which alter the relevance of "due process" restraints to university procedures? How relevant are the procedures typically used in determining the dismissal of a university faculty member?

"Legality" in the university. Beyond the immediate and practical issues of specific restraints in university settings, the FSM protests raised more general questions about the nature of authority. The course of the protests provided a shocking reminder that authority depends on consent--consent which may be withdrawn at any time, with dramatic consequences for all concerned. When this occurred on a large scale in the University of California, that community was faced with some of the difficult questions which have been faced by the society at large since mass "civil disobedience" gained currency as a means of social protests. The socio-legal questions involved reach close to the core of all "legal" systems, some scholars believe.

Authority is taken to mean many things, One persuasive view (that of Simon) sees authority as a relation between two persons which influences one of them to accept a decision of the other without "deliberation," or "critical review" of its validity. Thus the acceptance of another's authority involves a "suspension of judgment" in deference to that of the other person.[264] T. D. Weldon has suggested this typically involves a presumption that the person exercising authority "could produce reasons, if challenged," and that these reasons would satisfy us that the decision asserted was appropriate.[265] Thus we do not challenge the "authoritative" person's decision--except in the unusual case, when the tenuousness of the relation is revealed. In such a terminology, power (e.g., physical force) may be employed without the acquiescence of its subject, but authority refers to a relationship which depends primarily on characteristics which the subordinate imputes to the authority-wielder. Fear of the power he can invoke may be one of those characteristics; citizens may obey laws at times solely for fear of physical arrest and detention. But such incentives are poor substitutes for belief by the governed that those who govern them do so by "right"--by authority which is "legitimate." All reasonably stable societies, Max Weber argued, depend on such beliefs.[266]

Building on such conceptions, Selznick and others have suggested the emergence in Western society of a tradition of "egality," under which all exercise of authority is seen as restrained by the need for reasoned justification. Selznick argues that any system of "governance by rules" which is to be stable and effective must do more than establish its basic "legitimacy," as "right" authority in general. It must also develop patterns of criticism and justification for specific official acts. These patterns must--upon proper challenge--allow public examination of the reasons for particular rules and applications, in light of the principles which give the system and its officials their legitimacy.

Recent events indicate that study of the origins, implications, and limits of "legality" in the complex modern university holds many opportunities for productive scholarship. As before, closer analysis is the first need. For example: (1) The university has a strong tradition of consensual governance,[267] and an inherent concern for exploring the reasons, assumptions, and principles of validation behind any assertion. These facts suggest that universities should have well-developed systems of reasoned restraint on the arbitrary use of authority. However, modern universities are also "formal" organizations, chartered by the state for the "efficient" achievement of special purposes upon the regular allocation of public funds. This fact has tended to produce a hierarchic administrative structure, and demands for central responsiveness to the public's view of those functions.[268] (2) There is growing emphasis on a "counter-principle" of authority that operates in the university, based on certified expertise. These facts have received attention primarily as illustrating one source of restraint on bureaucratic authority.[269] However, more attention is due the fact that the expert's authority itself is very hard to restrain "reasonbly" without destroying its value altogether. (3) In the past, an open paternalism has been assumed to be necessary in the relations of both faculty members and administrators with university students. This necessity is now being subjected to reasoned challenge in the administrative sphere--albeit with uncertain success. Even murkier questions concerning the authority of teacher over student remain largely unexplored in today's university.[270] (4) Finally, the university is a complex of distinct status groups, each with its own peculiar--but ambiguous and overlapping--aspirations, values, spheres of authority, and views on the uses of "law." The effects of their interplay on the development of "legal" forms of university governance has yet to be adequately described.

Thus issues concerning "legality" in the modern university are not simple. A number of questions suggest themselves: Why has the U. S. university historically not developed more systematic, reasoned justification for its rules? Do U. S. universities differ in this regard from those of other cultures? From other "private governments"? What social conditions foster the growth of incipient "legal" systems within "non-governmental" organizations? What problems are inherent in any movement toward "legality" as an ideal of university governance? What kinds of reasons are given today by university authorities to justify official, discretionary restrictions on the conduct of university members? Are there trends in the kinds of reasons given? If so, what are their directions? What trends are observable in the bases of student challenges to university officials' actions?

Clearly, open challenges to university rules, such as have occurred at Berkeley and other U. S. universities in the recent past, offer a prime opportunity for study of issues such as these. In addition, parallels in other cultures and eras should not be overlooked, for the important perspective they can provide on our own place and time.[271]

The legitimacy of university administration. A closely related "socio-legal" approach begins with a different focal points: the "legitimacy" ascribed to authority-relations whose continuation is accepted. The Free Speech Movement involved more than student objections to particular University restrictions on speech and activity, and more than open refusal to obey the specific rules being contested. For complex reasons, FSM leaders explicitly denied the basic legitimacy of the University's unqualified administrative authority over students' conduct. By words and by symbolic acts of civil disobedience (such as the December 3 sit-in) the FSM challenged both specific "abuses" of authority and the basic impropriety of a university's having rules made and enforced solely by administrators and Regents.

For example, the FSM asserted that specific administrators had shown "arbitrariness" by refusing to continue discussions of the reasons for the disputed rules; this charge suggests only changes in behavior, or perhaps at most the unfitness of specific persons. The FSM also urged that a pattern of past restrictions revealed a conscious design among administrators and Regents to stifle student political expression; this charge suggests more widespread misfeasance, and possibly a conspiracy to violate a public trust. It was argued that persons in administrative positions generally are too subject to political pressure to deal fairly with questions of political expression, and that an independent committee of faculty members should have final authority in such matters. It was argued by the Graduate Coordinating Committee that only students can represent students' legitimate interests adequately, so that students must have voting membership in University planning councils. It was contended by the Free Student Union that students, "as students, . . . have certain rights which no agency can legitimately grant or deny." Both the FSM and the FSU demanded that "negotiation" or "collective bargaining" by students with University authorities replace the "advisory" consultation generally prevalent at present.[272]

Responding to such attacks, University authorities referred to the Constitution of the State of California, under which "ultimate authority" was vested in the Regents by "the people" of the State. Appeal was made to the advantages of a lay governing board for separation of university life from direct political intervention by government and party officials. The necessity for University authorities to enforce "law and order" against rule-violators was asserted as a condition of university "self-government." The reasonableness, tolerance, decency, and good will of University officials were asserted, and called upon as evidence that their discretion was appropriate in a society where "the rule of law" protects rights amid great ideological diversity.

The principles by which authority gains legitimacy among its subordinates have been discussed by a number of social and political thinkers.[273] Max Weber's well-known "types" of authority (traditional, charismatic, and legal-rational) are based on the principles which make each type seem "right" to the people whose consent must be engendered. Weber was interested in principles applicable not only to explicitly "political" states but to all "corporate groups." He emphasized the emergence of legal-rational legitimacy in Western society.[274] In the same vein, Selznick has suggested that some principles of legitimacy are more conducive than others to the development of what he calls "legality." At a very general level, for example, a principle that treats authority as a rational means to specified ends is more conducive to reasoned justification of specific rules than one that accepts history (tradition) as its own justification.[275] More specifically, if legitimacy is attached to unfettered discretion in the hands of "duly constituted" administrative officials, there is little room for reasoned dialogue over specific rules. By contrast, if structures of rules are legitimized by reference to values shared among the members of an organization, this keeps open the possibility of reasoned criticism of the rule-structure and particular rules within it.

If such considerations are taken as important for universities and other "private governments," a number of significant questions arise which are relevant to the recent student protests. For example: What principles are put forward to "legitimize" the present structure of authority in U. S. universities? Are these principles well-accepted by the different status groups within the university, such as faculty, students, and professional research staffs? What are the typical grounds of challenge to administrative, regental, or faculty authority? What are the implications of specific legitimating principles for the development of stable university rule-systems? How explicit, and how widely accepted, are the principles used to justify specific university rules, or the character of a university's rule-system? How do the reasons given for particular official rules and acts affect popular acceptance of an administrative regime's legitimacy? If a specific administrative structure "loses" legitimacy with many persons in a university, what consequences are to be expected? How is administrative legitimacy reestablished, once it has been seriously questioned?

Such questions imply a thorough look at universities as "private governments." They suggest a view of the university as a complex political-legal system , whose officials and administrative arrangements depend for their effectiveness in part upon acceptance by subordinates as well as superiors. The events of 1964-65 at Berkeley would seem to lend much credence to such an approach.

The Effectiveness of University "Legal" Action

The uses and limits of formal law-enforcement as a means of social control are matters of concern today in many areas of society. One complex and puzzling set of questions surrounds the increased use of mass civil disobedience as a form of social protest, and the responses to it. These problems were prominent in the Berkeley controversy. They cannot be discussed in depth here, but a number of issues especially relevant to the university context may be briefly suggested.

Academic aims and law-enforcement. As we indicated above, the University of California's Policies and official declarations in 1964 suggested that rules regulating on-campus political expression were designed in part to safeguard academic standards in extracurricular discussions on University premises. The University wished officially to discourage "propaganda," encourage regard for "the reasoned argument as against the simplistic slogan," and foster "higher standards of conduct and work" in the academic community than those that prevail outside. In addition, the University's posture of support for "law and order" on and off the campus was an issue by May, 1964, and it became more so with student civil disobedience on the campus in the fall. In the face of these official concerns, some faculty members have suggested that the University places undue reliance on the effectiveness and propriety of formal rule-enforcement as the means to its ends.[276]

In the view of some scholars, some affirmative goals, such as the maintenance of "responsibility" in public speech and expression, cannot be enforced effectively by formal rules. These faculty members believe that, if such goals are to be attained in a community, they must be supported by values shared widely among the community's members, and reinforced by informal respect accorded those who uphold the values in question. Attempts to create "higher" standards of expression by legislation and police action, it is said, usually result only in equating "higher" with "more restrictive."

In this view, the activity of rule-enforcement generally places a university's officials in a punitive, restrictive posture; this inevitably does violence to the development of the intellectual community which universities seek, and competes with attempts to help students evolve their own independent and coherent codes of self-directed conduct. Thus, while some rules of student conduct may always be necessary, they should be minimized as far as possible, and should be left largely to the law-enforcement agencies which are better equipped to perform them. The university should avoid assuming elaborate law-enforcement functions, particularly in regard to events which are of primary concern to the community at large rather than to the distinctive goals of academic life. Restrictive rules should be avoided especially in the area of speech and expression, this view argues--first, because of expression's close relation to the university's goals of free inquiry and discussion; second, because of the many difficult and ambiguous judgments which have plagued the courts themselves in dealing with the basic constitutional liberties involved. If the university thus "gets out of the law-enforcement business" as much as possible, it is argued, the problem of student civil disobedience also is reduced: The occasions for violation or enforcement, the distance between administrators and students, and the confrontations of principle which rally students around protest leaders all are minimized.

By contrast, as we have seen, some University of California officials and faculty members continue to feel that the University has a function and duty, along with its other purposes, to uphold affirmatively the principle of respect for "law and order" in general. They believe that the minimal order necessary for normal University functions, and for the protection of involuntary audiences from a tyrannous few, requires the University to accept responsibility for some restraints on speech and expression. These restraints may even legitimately involve matters of content, some believe, and if established they must be rigorously enforced. Finally, many feel that the University's internal order is necessary to safeguard University "self-government" from outside intervention, which in turn is a precondition to the fulfillment of University goals. Thus it is felt that overt student disobedience of University rules, no matter what its intent or origins, cannot long be tolerated.

Whatever the merits of the case at hand, more study seems indicated on these underlying questions: Are there inherent limits to what can be accomplished by enforcing formal rules of human conduct?[277] What is their special relevance to a community with the university's distinctive goals? Are some university goals impeded by administrative enforcement of any rules? Or do such problems arise primarily from special restraints on matters of speech and expression? What objective consequences might be expected from universities' minimizing rule-enforcement generally on their campuses?

Further: Is student civil disobedience on the campus a cause of increased rule-enforcement activity, an effect of it, or both? What are the alternatives to formal rule-enforcement, for maintaining reasonable order in a university community? Is there increasing dependence throughout American society on formal means of social control?[278] If so, what are the social and economic forces which foster this trend, and how far do they affect the university? What means, if any, could be used to combat them, consistent with university goals?

The style of university rule-enforcement. Behind much of the dispute over the "crisis of authority" at Berkeley in 1964-65 lay basic differences of view as to the manner, method, or "style" of rule-enforcement which would have dealt effectively with student protests while remaining compatible with the character of a university community. It is clear that the problem of how to treat student civil disobedience on and off the campus was and is a vexing one for University administrators. In a February, 1965, speech assessing the events of the previous fall, President Kerr referred to the administration's having, "at times, only two equally intolerable alternatives: acceptance of mass violations or enforcement of mass discipline."[279] Most faculty members attempting to give advice seem to have been equally vexed by the events, and a series of basic, enduring disagreements became apparent among members of the University about the appropriate responses to the students' actions. These disagreements are not unrelated to convictions about who was "right" on the substantive matters at issue; however, they also involve basic questions about the character of rule-enforcement in any university community.

In the view of some, a university, like any other system of order, requires firm, prompt, and impersonal enforcement of its rules by the established authorities if it is to deter its members from "anarchy," wherein each person obeys no rule with which he disagrees. An opposing view sees the university as having less need for strict orderliness than for a flexible system of personal relationships between administrators, faculty, and students, to allow taking account of the special purposes and detailed consequences of each internal "disturbance"--for example, the avowedly "moral" aims and largely non-violent character of the FSM demonstrations. Thus the former view took student rule-violations as demonstrating irresponsible defiance of constituted authority, and looked to their early suppression for the sake of "the rule of law." But those with the latter view urged that the students' sincerity should have been assumed from the start, and that University officials should have been willing to admit early in the dispute that their rulings might have been misguided. Some members of the academic community went still further, arguing that rules and authority-relations should serve affirmative, liberating functions as well as restrictive ones. Thus, they believed, University authorities should have done more to encourage students' intelligent pursuit and full use of their "legitimate" on-campus freedoms, before being forced grudgingly to concede them under severe duress.

Similarly, some members of the University argued that unconditional "negotiations" with the student protestors were quite justified, once it was established that they had legitimate grounds for believing they had a grievance. Others maintained that the protestors' symbolic defiance of authority must be "cured" by their public acceptance of University administrative discretion, before consultation with them could be continued. One view saw amnesty for sincere protestors as humane, reasonable, and conducive to campus peace; another saw it as "surrender" to intimidation by an obstreperous few.

Student mistrust of administrators also divided the campus: Some saw the protest leaders as irredeemably and unreasonably suspicious of all authority and of adult society in general, so that discussion with them was useless. Others called for greater efforts to meet the students' mistrust on its own grounds, and to understand its bases in honest anger at the hypocrisy, administrative dissembling, and abuse of power that students believe they see in much of modern society.

Finally, the role of police on the campus became a major subject of contention. Some persons in the University saw the warnings and arrests made by campus officers, and the eventual introduction of outside police squads, as orderly and proper law-enforcement against student "lawlessness." Others argued that the campus police arrest on October 1, 1964, just as a protest rally assembled, was a needless provocation of the student demonstrators. They urged that the discretion allowed to campus policemen in regulating student-faculty-administrator relations should be severely limited, to avoid incidents such as the arrest and release of Mario Savio at the Greek Theater on December 7. A substantial body of faculty on December 3, 1964, demanded that outside police be kept off the campus, and protested the barring of University faculty members from the scene of the sit-in arrests. Some argued that the arrests themselves were unnecessary and punitive expressions of public anger, substituted for attempts to reach the root of the students' complaints.

For each of these sets of opposed views, intermediate positions and subtly differing opinions could be found. On prudential matters such as the manner of rule-enforcement in a time of crisis, each view gains much from hindsight, of course, and is highly dependent on the circumstances and assumptions of the moment. However, the oppositions described above may suggest more stable issues for socio-legal research. At a very general level, here are a few:

What is known, in an empirical way, about the deterrent or rehabilitative effects of law-enforcement on its subjects? How applicable is such knowledge to the less formalized context of university student-conduct rules? What assumptions about the goals, methods and consequences of university authority underlie most university disciplinary actions against students? What are the assumptions typically made by university authorities about students' motives, intellectual capacities, and emotional maturity? How well do these assumptions fit the students involved in the recent wave of symbolic rule-violations? What consequences on the campus might be expected if university officials treated student civil disobedience as a sincere demonstration of moral conviction rather than as reprehensible lawlessness? What reactions might be expected from the general public?

Further: What special problems does mass "civil disobedience" create in the enforcement of reasonable rules of conduct generally? Is the authority of all rules weakened or strengthened by successful use of civil disobedience as social protest? In what ways is the impact on the legal system different from mass civil disobedience, based on public rallies and political campaigns, as compared with individual "acts of conscience," involving less visible social processes? In the current student use of mass civil disobedience, what is the role of typical expectations about the severity of penalties? How are these expectations changing--e.g., do current protestors expect severer penalties or less severe? What effect, if any, has this had on university rule-enforcement activity? On university authorities' readiness to penalize rule-violating demonstrations on campuses?

These questions are only illustrative of many that call for further study. Such questions are obviously difficult to answer in any precise way.

But their import for our understanding of "legal" processes in universities is great, and the answers assumed by administrative authorities in dealing with current student protests clearly are of great practical consequence.

Civil Liberties and Academic Freedoms of University Students

The Free Speech Movement based its claim of student rights to on-campus political expression in good part on the First and Fourteenth Amendments to the U. S. Constitution. In the words of the December 7, 1964, FSM Position statement:

> Civil liberties and political freedoms which are constitutionally protected off campus must be equally protected on campus for all persons.[280]

The Regents' actions of November 20 and December 18, 1964, evidently recognized the argument that current constitutional cases had made some University restrictions on political expression "of doubtful legal enforceability." Thus it would seem that an appeal to constitutional liberties guaranteed by the civil courts succeeded in bringing about greater freedom of speech and action within a university. This is a surprising conclusion to some who have long seen the university as a bastion of greater freedoms than are allowed by the general community.

For some faculty members, reliance on the U. S. Constitution to protect on-campus freedoms is not the most desirable course. They urge a different approach, typified by a draft Statement on Faculty Responsibility for the Academic Freedoms of Students which was produced in 1964 by Committee S of the American Association of University Professors and has since been discussed in AAUP member chapters. The Committee S Statement says that student "freedom to learn" involves "opportunities to exercise the rights of citizenship on and off the campus." But its declaration of faculty responsibility for student freedoms is based on the "essential attributes of a community of scholars." Thus protection of student freedoms here rests not on the constitutional rights of citizens, but on "rights" said to inhere in the status of student. The relation of the university to the outside legal system is taken for granted, and is not discussed. Emphasis is on freedom from restrictions internal to the university, and on the responsibilities of faculty members to help assure protection of "academic" freedom for students as well as for themsleves. The Statement does not argue that the "academic freedom" of students should be identical in scope or quality to that of faculty members. It bases students' rights on the "freedom to learn" implied by their special position as learners.[281]

An approach similar to that of the AAUP Committee is contained in a pamphlet stating the "views" of the American Civil Liberties Union on

Academic Freedom and Civil Liberties of Students in Colleges and Universities. This pamphlet takes the position that "the function of the college or university" requires the following:

> . . . [T]he student must be viewed as an individual who is most likely to attain maturity if left free to make personal decisions and to exercise the rights, as well as shoulder the responsibilities, of citizenship on and off the campus.
>
> . . . Limitations on the freedom of students are not then to be seen as simple administrative decisions which adjust the school to the prevailing climate of public opinion. The college's policy vis-a-vis its students goes to the heart of the condition necessary for adequate personal growth and thus determines whether an institution of higher education turns out merely graduates or the indispensable human material for a continuing democracy.[282]

In other words, the ACLU views the encouragement of student "maturity" through the *practice* of citizenship as an inherent demand of the university's own functions. Hence it must be protected, or at least not restricted by administrative policies as well as classroom activities. The freedoms and responsibilities of the student *as* student include those of the citizen, and these may be exercised on the campus as well as off. The ACLU by implication calls on administrators as well as faculty members to assure that such freedoms are protected.

The distinction between these bases of student freedoms can become critical in some cases. For example, political expressions of university students who are non-citizens of the U. S. might be protected by a policy based on university functions, while not on an appeal to the Constitution.[283] Persons not currently enrolled might be able to secure freedoms of political expression on a "public" university campus by reference the the U. S. Constitution, although they could not claim formal student status. If a university's policies allowed greater freedom of expression on campus than that contemplated by state law or local ordinances, reference to special requirements inherent in the status of the student might lead a court to uphold the university policy.[284] Finally, whenever our focus is the question of how far courts are to regulate substantive conduct on the campus, the special character of the student status may come to issue.

Research in this area must soon return to analysis of the special functions or "regulatory interests" of the university, as viewed by the courts. But in addition, researchers might ask: What are the specific legal and social consequences of relying on the different bases of student freedoms mentioned above? What are the bases of student rights and duties in other nations and cultures? What is the relevance of "academic freedom" for faculty members to the situation of students in today's university?[285]

Such "socio-legal" questions touch upon intertwined problems of law, social status, and cultural change that have long been studied in separation, although they are often intertwined in actual events. It may be that the systematic study of such issues in their connections as well as their separateness would advance the cause of all the disciplines concerned. At present, in any event, the promise seems clearly to justify the undertaking. And few recent events have illustrated the complex interrelations of law and society as well as the disturbing and stimulating "free speech" crises at Berkeley.

CHAPTER V

LIST OF RESEARCH MATERIALS*

The following is a summary list of research materials assembled in the preparation of this report, as a basis for future research. These materials are being made available to university researchers and others for scholarly purposes.

Basic Documents of the Berkeley Disputes**

Academic Senate, Berkeley Division. Minutes and Notices of Meetings (complete) from October 13, 1964 through May 27, 1965.

Academic Senate, Berkeley Division, and others. Press releases, statements, and working documents concerning actions taken or proposed to be taken by the Division, 102 pp.

Academic Senate, Records of the Assembly and Notices of Meetings on February 12, March 12 and 22, and May 24, 1965.

American Association of University Professors, Committee "S," "Statement on Faculty Responsibility for the Academic Freedom of Students," reprint from _AAUP Bulletin_, Autumn, 1964, pp. 254-257.

American Civil Liberties Union, Berkeley-Albany Chapter, "The Campus and the Constitution," Berkeley: ACLU, November, 1964, 4 pp.

American Civil Liberties Union, Berkeley-Albany Chapter, "Statement of Policy of the Berkeley-Albany Chapter of the American Civil Liberties Union," November, 1964. Mimeographed 11 pp.

---

* Since the completion of this report in December, 1965, several additional publications have appeared which are significant for issues discussed herein. Chief among these are University of California, Berkeley, Academic Senate, _Education at Berkeley_: Report of the Select Committee on Education, March, 1966; and "Symposium: Student Rights and Campus Rules," _California Law Review_, Vol. 54, No. 1 (March, 1966), pp. 1-178. Also relevant are portions of Mitchell Cohen and Dennis Hale (eds.), _The New Student Left: An Anthology_, Boston: Beacon Press, 1966; and Paul Jacobs and Saul Landau, _The New Radicals_, New York: Random House, 1966.

** Except as noted, the materials listed include only those relevant to the "free speech" and allied controversies of the year 1964-65.

American Civil Liberties Union News, San Francisco. Issues of November and December, 1964, and January and February, 1965.

American Civil Liberties Union of Northern California. Memorandum submitted *amicus curiae* in the Municipal Court for the City of Berkeley, case of "People of the State of California vs. University of California Demonstrators," January 23, 1965, 16 pp.

Associated Students of the University of California, Berkeley. Minutes of ASUC Senate Meetings, Fall and Spring, 1964-65 (complete). Mimeographed 439 pp.

Assorted Bay Area radio and television stations. Broadcast transcripts, 47 pp.

Assorted Berkeley student organizations. Correspondence with other groups and individuals, 103 pp.

Assorted Berkeley student organizations. Leaflets (concerning FSM and allied issues) distributed on campus, 252 pp.

Assorted Berkeley student organizations. Leaflets (concerning other political and social issues) distributed on campus, 188 pp.

Assorted individuals. Satirical and other artistic works, personal accounts, etc., 72 pp.

Assorted State officials, University administrative officers, faculty members, students, alumni, and others. Correspondence, 193 pp.

Assorted State officials, University administrative officers, faculty members, students, alumni, and others. Public statements and news releases, 228 pp.

Boalt Hall Students Association, *Information on Current Campus Legal Questions*, academic year 1964-65, Berkeley. Dittoed 10 pp.

Byrne, Jerome C., "Report on the University of California and Recommendations to the Special Committee of the Regents of the University of California," May 7, 1965. Xeroxed 84 pp. and bibliography. Also printed in *Los Angeles Times* of May 12, 1965 and distributed later as *The Byrne Report, Reprinted from the Los Angeles Times*, Los Angeles: The Times, 19 pp. Also reprinted and distributed in Berkeley on May 15, 1965 and after, by the Free Student Union, as "Text of the special Byrne Report, commissioned by the Forbes Committee of the Board of Regents, proposing reorganization of the University of California," 19 pp.

California Constitution, Article IX, Section 9. (Reproduced in *California Monthly*, February, 1965, pp. 76-77.)

Certain Faculty Members of the University of California, Berkeley, "A Suggestion for Dismissal," submitted to Municipal Court for the Berkeley-Albany Judicial District in the case of *The People of the State of California versus Mario Savio et al.*, January, 1965, 81 pp.

Cleaveland, Brad, "A Letter to Undergraduates," in *SLATE* Supplement Report*, vol. 1, no. IV, Autumn, 1964, 13 pp., (an insert in the *SLATE Supplement to the General Catalogue*, vol. II, no. I, Autumn, 1964).

Cleaveland, Brad, "$20 Million, 2000 Teachers: Something Like *This* Is Needed," Berkeley: Berkeley Free Press, Spring, 1965, 7 pp.

Committee on Academic Freedom, Berkeley Division of the Academic Senate, "Recommendations for the Regulation of Student Political Activity," December 29, 1964, 6 pp.

Committee on Campus Political Activity. Minutes of meetings on October 21, 24, 28, 29 and November 4, 5, and 7, 1964 (unofficial), 58 pp.

Committee on Campus Political Activity and others. Working documents, correspondence, reports, and comments to or by Committee members, 88 pp.

Council of Department Chairmen, Berkeley campus. Public statements and news releases, 11 pp.

Cunningham, Thomas J., Memorandum from the Office of the General Council to The Regents of the University of California, "Re: Legal Aspects of University Regulations." Attachment to The Regents, *Minutes* of meeting April 23, 1965, 7 pp.

The Daily Californian, all issues for academic year 1964-65 (September 15, 1964 through May 21, 1965) and summer session, 1965 (June 22 through September 3, 1965).

Draper, Hal, *The Mind of Clark Kerr*, Berkeley: The Independent Socialist Club, October 4, 1964, 14 pp. Copyright 1964, by Hal Draper. Also published in *New Politics*, Fall, 1964, pp. 51-61.

Emergency Executive Committee, Berkeley Division of the Academic Senate. Reports, resolutions, and public statements, 33 pp.

Fact-Finding Committee of Graduate Political Scientists, *The Berkeley Free Speech Controversy, Preliminary Report*, December 13, 1964, Berkeley. Mimeographed 43 pp.

Faculty Forum, "Draft of a Faculty Statement on Academic Order and University Self-Government," Berkeley: privately printed, December, 1964.

Felsenstein, Lee (ed.), "Free Speech Songbook," Berkeley, Spring, 1965. Mimeographed, 16 pp.

Free Speech Defense, "Three Documents" (demurrer, motions concerning pretrial hearings, and preliminary statement of issues) to the Municipal Court for the Berkeley-Albany Judicial District, in the case of *The People of the State of California v. Mario Savio, et al.*, Berkeley: privately printed, 38 pp.

Free Speech Movement. Leaflets and Newsletters distributed on campus, 140 pp.

Free Speech Movement. Miscellaneous correspondence and working documents, 163 pp.

Free Speech Movement. News releases (complete), 79 pp.

Free Student Union. Leaflets and Bulletins distributed on campus, 60 pp.

FSM Defense Fund and others. Leaflets, newsletters, and correspondence concerning trial of December 3 sit-in defendants, 68 pp.

Garson, Marvin, *The Regents*, Berkeley: privately printed, 1965, 22 pp.

Heyman, Ira M. (chairman) *et al.*, *Report of the Ad Hoc Committee on Student Conduct* (concerning the eight students suspended September 30, 1964). Dated November 12, 1964, 12 pp.

Kerr, Clark. Major public statements, 1964-65; selected speeches, 1962-64; 161 pp.

Kornhauser, William, *et al.*, *Campus Autonomy and the Regents: A Reply to the Meyer Report*. Mimeographed statement issued at Berkeley, April, 1965, 4 pp.

Kornhauser, William, *et al.*, *Critique of the Meyer Committee Regulations*. Mimeographed statement issued at Berkeley, April, 1965, 8 pp.

"A Message on the Proposed Solution to the Free Speech Controversy, from: Faculty Members of the University of California at Berkeley, to: Colleagues and Friends in the State-wide University, Members of Other Colleges and Universities, Fellow Citizens," privately printed, n.d., 4 pp.

Meyer, Theodore R. (Chairman, Special Committee to Review University Policies), "Report of Special Committee to Review University Policies." Attachment to The Regents, *Minutes* of meeting April 23, 1965, 9 pp.

Meyerson, Martin. Major public statements, 1964-65, 65 pp.

Office of the Chancellor, Berkeley, "Regulation on Student Conduct and Discipline," November 1, 1961, 3 pp.

Office of the Dean of Students, Berkeley, "General Policy Statement on Picketing," August 18, 1964, 1 p.

Office of the Dean of Students, Berkeley, "Information for Student Organizations, 1964-65." Mimeographed, 42 pp.

Office of the Dean of Students, Berkeley, "Interim Rules," April 5, 1965, 1 p.

Office of the Dean of Students, Berkeley, "Policies Regarding Social Events," September 1, 1964, 3 pp.

Office of the President, University of California, "The Organization of the University," a memorandum for members of the Board of Regents, June 18, 1965, 10 pp.

Office of the President, University of California, "A Progress Report on Administrative Changes and Developments at the University of California," a memorandum for the Committee on Finance, Board of Regents, April 23, 1965, 18 pp.

Office of the President, University of California, "Regulation on Use of University Facilities," revisions of November 30, 1959, February 3, 1961, and August 16, 1961, 9 pp.

Office of the President, University of California, *University of California Policies Relating to Students and Student Organizations*, Berkeley: University of California Press, September, 1963, 22 pp.

Office of the President, University of California, *University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination*, Berkeley: University of California Press, July 1, 1965, 16 pp.

The Regents of the University of California. *Minutes* of monthly Board meetings, September, 1964 through July, 1965; and of the Committee on Educational Policy, March-May, 1965. (Includes complete official minutes except those taken in Executive Sessions.) 194 pp.

The Regents of the University of California and others. Miscellaneous working documents and communications to and from the Board or individual members, 176 pp.

Rossman, Michael and Lynne Hollander, "Administrative Pressures and Student Political Activity at the University of California: A Preliminary Report," 1964, 8 pp.

Schmorleitz, Richard, *For Unlawful Carnal Knowledge*, Berkeley: privately printed, 1965, 17 pp.

Select Committee on Education, Berkeley Division of the Academic Senate, "Preliminary Report" (on the need for educational reforms), May 24, 1965, 7 pp.

SLATE Supplement to the General Catalogue, Berkeley: SLATE, vol. II, no. I, Autumn, 1964; vol. II, no. III, February, 1965, 72 pp.

SLATE Supplement Report*, "Is It Time For Communist Professors?" Berkeley: SLATE, vol. II, no. IV, 1965, 23 pp.

Somers, Robert H., "The Mainsprings of the Rebellion: A Survey of Berkeley Students in November, 1964," dated January, 1965, 53 pp.

Special Committee to Review University Policies (Meyer Committee) and others. The Committee's report, its proposed "Universitywide Regulations Relating to Student Conduct, Student Organizations, and the Use of University Facilities," and assorted comments thereon, Spring, 1965, 75 pp.

Spider magazine, issues of March 1, 15, April 15, May 3, 24, and July 26, 1965, Berkeley: The Free Press, 1965.

Strong, Edward W. Major public statements, 1964-65, 37 pp.

Union of Employed Students, American Federation of Teachers Local 1570. Leaflets, working documents, and correspondence concerning the bases and concerns of student-employee unions, 48 pp.

University Bulletin. A weekly bulletin for the staff of the University. Issues of October 26, 1964, through June 29, 1965.

"We Want a University. Dedicated to the 800," Berkeley, c. December, 1965. Mimeographed, 10 pp.

Whinnery, John (chairman) *et al.*, "Report and Recommendations of the Ad Hoc Committee on Student Conduct," (concerning the four students charged with violating University regulations by use of obscene language), April 20, 1965. Mimeographed, 15 pp.

Selected Commentary on the Berkeley Disputes

Alegria, Fernando, "Student Revolutions in U. S. A.," in *Occident*, Berkeley, Fall, 1964-65, pp. 20-23.

Alexander, Shana, "You Don't Shoot Mice with Elephant Guns," *Life*, January 15, 1965, p. 27.

The American Student, "The Impact of Berkeley," vol. 1, no. 1. Published by USNSA.

Aptheker, Bettina, "Free Speech Revolt on Berkeley Campus," *Political Affairs*, XLIV: 53-57, January, 1965.

Aptheker, Bettina, "The FSM: An Historical Narrative," in *FSM*, San Francisco: The W. E. B. Dubois Club of America, 1965, pp. 1-24.

Baldwin, R. D. *et al.*, "More on Berkeley," in letters in *Science*, August 20, 1965, 815 pp.

"The Berkeley Case," panel discussion among David Kolodney, Martin Malia, Stephan Weissman, and Sheldon Wolin, in O. A. Knorr and John Minter (eds.), *Order and Freedom on the Campus: Rights and Responsibilities of Faculty and Students*, Boulder, Colorado: Western Interstate Commission for Higher Education, 1965, pp. 41-60.

Blumenfeld, Neal, "The Psychology of Berkeley," letter to the Editor, *Ramparts*, 4:13-14, May, 1965.

Boler, John F., "Behind the Protests at Berkeley," *Commonweal*, February 5, 1965, pp. 602-605.

Brienberg, Elizabeth, "More on the FSM," in *Studies on the Left*, Spring, 1965, pp. 95-97.

Burnett, Jane, "Berkeley 'Revolution' In New Phase As Students and Faculty Organize," in *new america* (Newspaper of the Socialist Party), December 30, 1964, pp. 1 & 12.

Cain, Leonard D. Jr., "The 'Free Speech' Issue at the University of California: A Correction of Press Distortions," speech delivered December 6, 1964. Mimeographed, 7 pp.

California Business Administration Alumni Association, *Newsletter*, vol. X, no. 3, February, 1965.

California Monthly, "Alumni Council Backs Meyer Committee Reports," in *California Monthly*, June, 1965, p. 50.

California Monthly, "Appendix: Documents in the Free Speech Controversy," in *California Monthly*, February, 1965, pp. 76-92.

California Monthly, "Chronology of Events: Three Months of Crisis," in *California Monthly*, February, 1965, pp. 35-74.

California Monthly, "Continuing Crisis at Berkeley," (a chronology of events from January 1 - April 28, 1965), in *California Monthly*, June, 1965, pp. 52-56.

California Monthly, Readers "Letters" in *California Monthly*, March, 1965, pp. 4-8, and June, 1965, pp. 4-6.

California Monthly, "A Season of Discontent," (entire issue), February, 1965.

California Monthly, "Survey of Student Attitude Toward 'Free Speech Movement,'" in *California Monthly*, May, 1965, pp. 16-17.

Cass, James, "What Happened at Berkeley," *Saturday Review*, January 16, 1965, pp. 47-48, 66-69.

Chemistry and Engineering News, "New Report May Start More Unrest at Berkeley," June 14, 1965, pp. 42-43.

The Christian Century, "Other Views of Berkeley," February 3, 1965, pp. 147-148.

The Citizen, Pre-Publication Newsletter, "Following the F. S. M." (bibliography). Berkeley Newspaper Cooperative: March, April, 1965.

Columbia University Forum Readers, "On Berkeley, An Exchange," in Columbia University Forum, Summer, 1965, pp. 46-49.

Cunningham, Thomas J., "Legal Aspects of Campus Unrest," a speech delivered at the June, 1965, meeting of the National Association of College and University Attorneys, Copyright 1965, Thomas J. Cunningham. Xeroxed, 26 pp.

Davis, Lawrence H., *Report on Berkeley*, made to the National Supervisory Board, U. S. National Student Association, and the 18th National Student Congress, 1965, 21 pp.

Despite Everything Quarterly, "Letter From Berkeley," in *Despite Everything* Quarterly, *Special Letter*, Berkeley, January, 1965. Mimeographed, 15 pp.

Draper, Hal, *Berkeley: The New Student Revolt*, New York: Grove Press, Inc., 1965. 246 pp.

Draper, Hal, and Nathan Glazer, "FSM: Freedom Fighters or Misguided Rebels?" *New Politics*, Winter, 1965, pp. 25-51.

Dunayevskaya, Raya, "Free Speech Movement and 'The Community of Scholars'," in *News and Letters*, Detroit, January and February, 1965.

Eisenstein, Diana, "The Free Speech Movement: University of California at Berkeley," Berkeley: Distributed by Campus Americans for Democratic Action for presentation at the National Student Association Congress, August 22 - September 2, 1965, 9 pp.

Erickson, Dick, "Editorial," in *California Monthly*, February, 1965, pp. 4-5.

Esquire, September, 1965. Issue devoted to satire and pseudoanalysis of student rebels at Berkeley and elsewhere.

Feuer, Lewis S., "Inevitability and Institutes," *The New Leader*, January 18, 1965, pp. 9-10.

Feuer, Lewis S., "Pornopolitics and the University," *The New Leader*, April 12, 1965, pp. 14-19.

Feuer, Lewis S., "Rebellion at Berkeley," *The New Leader*, December 21, 1964, pp. 3-12.

Feuer, Lewis S., "A Reply," *The New Leader*, January 4, 1965, pp. 15-17.

Fitch, Robert E., "Extremism in the Defense of . . ." in *Christian Century*, January 6, 1965, pp. 11-15.

Free Student, nos. 1-4, New York: The May 2nd Movement, c. 1964-65 (n.d.).

The Free University Press, published by the Free Speech Movement at UCLA, Spring, 1965, 6 pp.

The Gate, Independent Newspaper, Berkeley, Fall, 1965 issues (complete).

Glazer, Nathan, "What Happened at Berkeley," *Commentary*, February, 1965, pp. 39-47.

Glazer, Nathan, and Paul Goodman, "Letters. Berkeley: An Exchange," *The New York Review of Books*, February 11, 1965, pp. 22-23.

Gleason, Ralph J., "The Times They Are A-Changin'," *Ramparts*, April, 1965, pp. 36-48.

Goldberg, Harold, "Berkeley," *Frontier*, 16: 5-6, 8-12, January, 1965.

Goldman, Charles, *et al.*, "Letters: California's Kerr," *Newsweek*, December 14, 1964, pp. 2, 8.

Goodman, Paul, "Berkeley in February," *Dissent*, Spring, 1965, pp. 161-183.

Goodman, Paul, "Thoughts on Berkeley," *The New York Review of Books*, January 14, 1965.

The Graduate Student Journal, "Editorial," Spring, 1965, pp. 13-15.

Harrison, Gilbert A., "Berkeley--Does That Banner Still Wave?" *The New Republic*, 151: 7-8, December 19, 1964.

Hayakawa, S. I., *The F. S. M. Demonstrations*, December 8, 1964. Mimeographed, 4 pp.

Hechinger, Fred, "Campus Dispute," *The New York Times*, December 20, 1964.

Heirich, Max, and Sam Kaplan, "Yesterday's Discord," in *California Monthly*, February, 1965, pp. 20-32.

Heisler, Friedy B., "A Psychiatrist Looks Back at Berkeley," in *The Progressive*, 29: 33-35, May, 1965.

Heist, Paul, "Intellect and Commitment: The Faces of Discontent," in O. A. Knorr and J. Minter (eds.), *Order and Freedom on the Campus*: Rights and Responsibilities of Faculty and Students, Boulder, Colorado: Western Interstate Commission for Higher Education, 1965, pp. 61-70.

Hook, Sidney, "Freedom to Learn But Not to Riot," *New York Times Magazine*, January 3, 1965.

Hook, Sidney, "Second Thoughts on Berkeley," mimeographed, "not proof-read and unrevised." Received June 28, 1965, 49 pp.

Howe, Irving, "Berkeley and Beyond," *The New Republic*, 152: 14-17, May 1, 1965.

Humanity, an arena of critique and comment, Berkeley: National Association of College and University Chaplains, etc., nos. 1-3 (November and December, 1964 and February, 1965).

Ingerman, Sidney, "Employed Graduate Students Organize at Berkeley," *Industrial Relations*, 5: 141-150, October, 1965.

Insurgent, "FSM: A New Era," in *Insurgent*, March-April, 1965, pp. 5-6, 16.

ISIS, "California Revolt," January 23, 1965, pp. 25-27.

issue: "*those who make the waves*." Articles by Joseph Havens, Paul Denise, William Porter, William Stanton, Eric Bond, Lucille Birnbaum, T. Walter Herbert, Eric Brodin, Leonard Cain, Martin Malia, Lawrence Levine, and Keith Chamberline. Published by University Church Council, Berkeley, Spring, 1965, 47 pp.

Jacobs, Paul, "Dr. Feuer's Distortions," *The New Leader*, January 4, 1965, pp. 9-11.

Jacobson, Norman, "An Appeal to the Faculty at Berkeley," in *The Graduate Student Journal*, Spring, 1965, p. 16.

Kaplan, Samuel, "The Revolt of an Elite: Sources of the FSM Victory," in *The Graduate Student Journal*, Spring, 1965, pp. 26-30, 75-91.

Kaufman, Robert and Michael Folsom, "FSM: An Interpretive Essay," in *FSM*, San Francisco: The W. E. B. DuBois Club of America, 1965, pp. 25-52.

Kerby, Phil, "The Real Issue," *Frontier*, 16: 3, January, 1965.

Kerr, Clark, "For the Record," *The New Leader*, January 18, 1965, pp. 8-9.

Kerr, Clark, "A Message to Alumni," in *California Monthly*, February, 1965, pp. 94-96.

Kerr, Clark, "Rebuttal from Berkeley," in "Letters to the Editor," *Saturday Review*, March 6, 1965, pp. 21, 57-58.

Kerr, Clark, and Sheldon S. Wolin and John H. Schaar, "An Exchange on Berkeley," *New York Review of Books*, April 8, 1965, pp. 35-36.

Krassner, Paul, "We Should Beat 'Em Senseless First," in *Cavalier*, April, 1965, pp. 16-17.

Kruytbosch, Carlos E., "Rebellion at Berkeley," in "Dear Editor," *The New Leader*, February 1, 1965, p. 35.

Langer, Elinor, "Crisis at Berkeley: (I) The Civil War," Science, April 9, 1965, pp. 198-202.

Langer, Elinor, "Crisis at Berkeley: (II) The Second Front," Science, April 16, 1965, pp. 346-349.

Lawrence, John H., "The Regents' Role" in "Letters," Science, June 4, 1965, pp. 1276-1277.

Lembke, Daryl E., "Nonstudents Create a 'Shadow School' at U. of California," Milwaukee Journal, April 18, 1965.

Levine, Eric, "Berkeley Free Speech Controversy," pamphlet prepared by Students for Democratic Society for the Liberal Study Group at the U. S. National Student Association Congress, Madison, Wisconsin, 1965, 23 pp.

Levy, David, "Freedom and FSM," in Man and State, a student conservative journal, December, 1964, p. 2.

The liberal democrat, "Editorial," V: 2, November, December, 1964.

Liebert, Roland, The Berkeley Case: Issues in Student Academic Freedom, A Brief Critique (second edition), Philadelphia: U. S. National Student Association, March, 1965.

Life, "Editorials: Campus Agitation vs. Education," Life, January 22, 1965, p. 4.

Life, "Panty Raids? No! Tough Campus Revolt," Life, December 18, 1964, pp. 46A-46B.

Life, "President Under the Gun (Part II College Pressure)," Life, January 15, 1965, pp. 58-72.

Lipset, Seymour Martin and Paul Seabury, "The Lesson of Berkeley," The Reporter, January 28, 1965, pp. 36-40.

Lipset, Seymour Martin and Sheldon S. Wolin (eds.), The Berkeley Student Revolt: Facts and Interpretations, New York: Doubleday & Co., Inc., 1965, 585 pp.

Look, "Behind the Campus Revolt," February 23, 1965, pp. 30-42.

Los Angeles Times, "Times Editorials: Implementing the Byrne Report," in Los Angeles Times, May 16, 1965. (Reprint) 1 p.

Lyons, Glenn, "The Police Car Demonstration, A Survey of Participants," Berkeley, Spring, 1965. Dittoed 15 pp. Reprinted in Seymour Martin Lipset and Sheldon S. Wolin (eds.), The Berkeley Student Revolt: Facts and Interpretations, New York: Anchor Books, Doubleday & Co., Inc., 1965, pp. 519-530.

Man and State, "Special Report: The Free Speech Fight," in Man and State, a student conservative journal, December, 1964, pp. 4-6.

Marine, Gene, "The Day of the Cops," Frontier, 16: 7-8, January, 1965.

Marine, Gene, "No Fair! - The Students Strike at California," The Nation, December 21, 1964, p. 482-486.

The Marxist-Humanist, "The Free Speech Movement, II," 1965. Mimeographed 1 p.

Meyer, Karl E., "Revolt on the Campus," The New Statesman, January 15, 1965, p. 65.

Meyerson, Martin, "A Message from Acting Chancellor Meyerson," in California Monthly, February, 1965, p. 96.

Miller, Colin, "The Student Revolt," Frontier, April, 1965, pp. 11-20.

Miller, Michael V., "The Student State of Mind," Dissent, XII: 176-183, Spring, 1965.

Miller, Michael V. and Susan Gilmore (eds.), Revolution at Berkeley: the Crisis in American Education, New York: Dell Publishing Co., 1965, 348 pp.

Moderator Editors, "Is Protest the Only Solution?" Summer, 1965, p. 56.

Mulford, Don, "Statement Concerning the University of California," released January 25, 1965. Xeroxed 8 pp.

Nagler, Michael, "Berkeley: The Demonstrations," in Studies on the Left, Winter, 1965, pp. 55-62.

Nagler, Michael and Floyd Hunter, "Press Distortion of the Free Speech Movement," The Realist, May, 1965, pp. 25-27.

The Nation, "Editorials: More Than Restless," The Nation, December 21, 1964, pp. 477-478.

Nelken, Michael, "My Mind is Not Property," in The Graduate Student Journal, Spring, 1965, pp. 30-33.

The New Republic Editors, "Rebels with Cause," 152: 5-6, May 1, 1965.

Newsweek, "Battle of Sproul Hall," *Newsweek*, December 14, 1964, pp. 44-46.

Newsweek, "Campus '65," *Newsweek*, March 22, 1965, pp. 43-63.

Newsweek, "Detente at Berkeley?" *Newsweek*, January 18, 1965, p. 52.

Newsweek, "Savio Onstage," *Newsweek*, December 21, 1965, pp. 71-72.

O'Neil, Robert M. and Sanford Kadish, "Freedom and Four Letter Words," in *California Monthly*, May, 1965, pp. 18-21.

Open City Press (San Francisco). Issues of November 18 and December 6-12, 1964; January 27 and February 10-16, 1965.

People's World (San Francisco). Issues of November 21, 28, 1964, December 12, 26, 1964, and January 2, 9, 23, 30, 1965.

Petersen, William, "Faculty Rebellion at Berkeley," Berkeley, Xeroxed c. December, 1964, 8 pp.

Petersen, William, "What's Left at Berkeley," *Columbia University Forum*, Spring, 1965, pp. 39-44.

Petras, James, "Politics of Democracy: The Free Speech Movement," in *Phi Delta Kappan*, March, 1965, pp. 343-346.

Petras, James and Michael Shute, "Communications: Berkeley '65," *Partisan Review*, Spring, 1965, pp. 314-323.

Pierovich, Andrew L., "Freedom and Campus Unity," in *California Monthly*, May, 1965, pp. 10-13.

Pierovich, Andrew L., "A Season of Discontent," in *California Monthly*, February, 1965, pp. 6-19.

Powell, Charles R., "Free Speech Movement," in *Collegiate Challenge*, no date (c. January, 1965).

Ramparts, "Editorial: The Lesson of Berkeley," *Ramparts*, 3: 3-4, March, 1965.

Ramparts readers, "Letters: The Psychology of Berkeley," *Ramparts*, May, 1965, pp. 13-14.

Raskin, A. H., "The Berkeley Affair: Mr. Kerr vs. Mr. Savio and Co.," *The New York Times Magazine*, February 14, 1965, pp. 24-25, 88-91.

Rossman, Michael, "Civil Rights and FSM: Some Background Notes," in *Occident*, Fall, 1964-65, pp. 1-14.

Savio, Mario, "An End to History," *Humanity*, December, 1964, pp. 1, 4.

Savio, Mario, "The University Has Become a Factory," (excerpts from an interview with Jack Fincher), *Life*, February 26, 1965, pp. 100-101.

Savio, Mario *et al.*, *The Free Speech Movement and the Negro Revolution*, Detroit: News and Letters, July, 1965, 53 pp.

Science Readers, "Letters: 'Crisis at Berkeley': Readers Comment on the Recent Science Articles," in *Science*, June 4, 1965, pp. 1273-1278.

Science Readers, "Letters: More on Berkeley," in *Science*, August 20, 1965, p. 815.

Selznick, Philip, "Berkeley," *Commentary*, 39: 80-85, March, 1965.

Shain, Charles H., *et al.*, "Rebellion at Berkeley," in "Dear Editor," *The New Leader*, January 4, 1965, pp. 31-34.

Shute, Michael, "Berkeley Campus in Revolt," *New Politics*, Fall, 1964, pp. 44-50.

Spence, Larry D., "Berkeley: What It Demonstrates," in *Studies on the Left*, Winter, 1965, pp. 63-68.

The Stanford Daily (Palo Alto). Issues of November 24, 30, 1964, and December 3, 1964.

Starobin, Robert, "Graduate Students and the Free Speech Movement," in *The Graduate Student Journal*, Spring, 1965. pp. 17-25.

Stern, Sol, "A Deeper Disenchantment," in *Liberation*, February, 1965, pp. 15-20.

Styron, Dan, "FSM" in *Young Socialist*, March-April, 1965, pp. 12-19.

Tabler, Ward, "Lessons from Berkeley," *Humanist*, XXV: 50-53, March/ April, 1965.

Thomson, John J., "Why I Did It, or Happiness is a Four-Letter Word," *The Realist*, May, 1965, p. 28.

Time magazine, "New Man at Berkeley," *Time*, January 15, 1965, p. 50.

Time magazine, "STUDENTS - The Berkeley Effect," *Time*, March 19, 1965.

Trillin, Calvin, "Letter from Berkeley," *The New Yorker*, March 13, 1965, pp. 52-107.

Trombley, William, "Acting U C Chancellor Cheery Despite Burdens," *Los Angeles Times*, April 19, 1965, pp. 10-11.

Trombley, William, "'Free Speech' Students Call Berkeley Poor College Campus," *Los Angeles Times*, January 10, 1965.

Trombley, William, "A Fresh Look at the University of California," *The New Republic*, July 3, 1965, pp. 14-15.

Trombley, William, "Sweeping U C Changes Urged in Byrne Report," *Los Angeles Times*, May 12, 1965. (Reprint) 2 pp.

The UCR Highlander (University of California at Riverside). Issues of November 11, 18, 25, 1964.

U.S. News and World Report, "A Campus Uproar That is Blamed on Reds," *U.S. News and World Report*, December 14, 1964, p. 12.

U.S. News and World Report, "A Cure for Campus Riots," an interview with Max Rafferty, *U.S. News and World Report*, May 17, 1965, pp. 70-72.

U.S. News and World Report, "When Students Try to Run a University--," *U.S. News and World Report*, December 21, 1965, p. 43.

the vanguard (Portland State College, Oregon). Issue of January 15, 1965.

Warshaw, Steven, *The Trouble in Berkeley*, Berkeley: The Diablo Press, April, 1965, 128 pp.

Watts, William A. and David N. E. Whittaker, "Some Socio-Psychological Differences Between Highly-Committed Members of the Free Speech Movement and the Student Population at Berkeley," in *Journal of Applied Behavioral Science*, vol. 2, no. 2, April-May-June, 1965.

Weinberg, Jack, "The Free Speech Movement and Civil Rights," in *The Campus Corelator*, Berkeley, January, 1965, pp. 6-11.

Weissman, Stephan, "What the Students Want," *The New Leader*, January 4, 1965, pp. 11-15.

Wenner, Jann, "FSM (after they've torn it down)" in San Francisco Magazine, June, 1965, pp. 31, 44-47.

Wenner, Jann, "FSM: an Undergraduate Viewpoint" in San Francisco Magazine, May, 1965, pp. 30-32, 42-48.

White, Geoffrey, "The Student Revolt in Berkeley," Spartacist, no. 4: 8-16, May-June, 1965.

Wiggins, Robert A., "'Free Speech' at Davis," in Dimension, a California Aggie Alumni Association publication, U. C. Davis. Spring, 1965, pp. 28-29.

Windmiller, Marshall, "The Berkeley Revolt," in The Liberal Democrat on the Pacific Scene, January, 1965, pp. 7-12.

Wolin, Sheldon S. and John H. Schaar, "Berkeley and the Fat of the Multiversity," The New York Review of Books, March 11, 1965. Reprint. 4 pp.

Young, Nigel, "Revolt in the Multiversity" in Peace News, January 15, 1965, pp. 3-4, 10-11.

Young Socialist, "News and Notes," in Young Socialist, January-February, 1965, pp. 24-25.

Selected Collateral Materials

American Civil Liberties Union, *Academic Freedom and Academic Responsibility*, New York: ACLU. Revised edition February, 1956, 16 pp.

American Civil Liberties Union, *Academic Freedom and Civil Liberties of Students in Colleges and Universities*, New York: ACLU. Revised edition November, 1963, 16 pp.

American Civil Liberties Union, Berkeley-Albany Chapter, "The Campus and the Constitution," Berkeley: privately printed, 4 pp.

Aragon, George, Letter to Editor of *New York Times Magazine* in reply to Sidney Hook's article, "Freedom to Learn But Not to Riot," n.d. Mimeographed 8 pp.

ASUC Senate, Berkeley, "Berkeley Conference on Educational Reform," reading materials. March 20, 1965. Mimeographed 81 pp.

Atlantic, "The Troubled Campus," *Atlantic*, 216: 108-160, November, 1965. Collection of articles.

Bair, Jake, "The Spanish Student Movement," *Studies on the Left*, Summer, 1965, pp. 3-20.

Braiman, Alex, "Riotous Behavior in the College: A Psychosocial View." Obtained at National Student Association Congress, Madison, Wisconsin, 1965. Xeroxed 22 pp.

Brant, Irving, *Congressional Investigations and Bills of Attainder*, New York: Emergency Civil Liberties Committee, n.d., 14 pp.

Brooks, Thomas R., "The New Totalitarian Left," *The New York Times Magazine*, April 25, 1965.

Brust, Manfred and Eugene Schwartz, *Course Evaluation*, Philadelphia: United States National Student Association, 1954, 28 pp.

"A Call to Student Action," Statement by the National Board of Campus Americans for Democratic Action, adopted August 15, 1965. University of Wisconsin. Mimeographed, 7 pp.

Campus Americans for Democratic Action, "Bill of Rights for the Academic Community." Adopted by the Sixth Annual Convention of Students for Democratic Action, predecessor to CADA, University of Pennsylvania, September 1953. Mimeographed, 5 pp.

David, Jack (ed.), *Student-Faculty-Administration Relations*, Philadelphia: United States National Student Association, n.d., 124 pp.

The Democratic Left. Published by Norman Thomas Chapter, Young Peoples Socialist League, Berkeley, California, [1964-65], 11 pp.

Dirks, Lee E., "The Anatomy of Rising Revolt on the Campus," *The National Observer*, December 28, 1964.

Dixon, James P., "Student Political Action," *AAUP Bulletin*, June, 1961, pp. 159-160.

Eley, Lynn W., "The University of California at Berkeley: Faculty Participation in the Government of the University," *AAUP Bulletin*, 50: 5-13, Spring, 1964.

Farnsworth, Dana L., M. D., "Unrest in the Colleges," in *American Journal of Psychiatry*, 1965, pp. 92-93.

Fischer, John, "Is There A Teacher on the Faculty?" *Harper's* magazine, February, 1965, pp. 19-28.

Freedman, Mervin, "The Post-Industrial Generation: Roots of Student Discontent," *The Nation*, June 14, 1965, pp. 639-643.

Gallagher, Buell G., "Controversy: Eristic and Heuristic," address delivered City College of New York Chapter of AAUP, February 18, 1965, 10 pp.

Goodman, Paul, "The Community of Scholars, 1962," *Commentary*, 33: 205-217, March, 1962.

Goodman, Paul and Alvin Duskin, "Free University. How to Make a College," (a dialogue) in *Despite Everything* Quarterly, II: 19-37, printed in Berkeley.

Goodman, Paul, *et al.*, "The Student's Role: A Forum," in *The American Student*, vol. 1, no. 1, published by the United States National Student Association, pp. 14-18.

Grant, Gerald, "Amherst Study Cites Unrest on Campuses," *Washington Post*, March 7, 1965.

Gusfield, Joseph, "Beyond Berkeley: High Noon on Campus," in *Trans-Action*, a publication of the Community Leadership Project, Washington University, St. Louis, Missouri, 2: 3-7, March/April, 1965.

Harper, Frank, "Free Speech Movement Goes to High School," in *The Black Mountain Press*, P. O. Box 577, Soquel, California. Distributed by Students for a Democratic Society, July, 1965.

Hayden, Tom, "Student Social Action," in Skip Robinson (ed.), *Readings in Student Community Investment*, Philadelphia: USNSA, 1962.

Hechinger, Fred M., "Student Action," *New York Times*, March 14, 1965.

Heiss, Ann M., "Berkeley Doctoral Students Appraise Their Academic Programs," Berkeley: Center for the Study of Higher Education, April, 1964, 104 pp.

Hedley, Leslie Woolf, "The Bohemian New Left, Part I," in *The Minority of One*, May, 1965, pp. 17-19.

Herbert, T. Walter, Jr., *Beyond the Crisis*, Berkeley: The Wesley Foundation, 1965, 9 pp.

Hoffman, Donald A. (ed.), *Rebels With a Cause*, Philadelphia: United States National Student Association, n.d., 95 pp.

Horowitz, David, *Student*, New York: Ballantine Books, Inc., 1962, 160 pp.

Huston, Tom Charles, "The First Amendment Rights of University Students," reprint distributed at 1965 USNSA Congress. Place of publication not given. 7 pp.

Hutchins, Robert M., "What Kind of World?" Los Angeles: *The Los Angeles Times* Syndicate, release date December 20, 1964. Xerox copy, 1 page.

Jarrett, James L., "College Students - The New Breed," *Saturday Review*, March 20, 1965, pp. 64-65, 75.

Johnston, Neal (ed.), *Academic Freedom*, Philadelphia: United States National Student Association, n.d. 98 pp.

Johnston, Neal, "An Examination of the theory of in Loco Parentis," from Roland Liebert, *Problems in Student Rights and Freedoms*, Philadelphia: USNSA, 1964.

Johnston, Neal, *In Loco Parentis*, Philadelphia: United States National Student Association, 1962, 118 pp.

Johnston, Neal, "What Are the Rights of Students," from Roland Liebert (ed.), *Problems in Student Rights and Freedoms*, Philadelphia: USNSA, 1964.

Jones, Marshall B., "The Role of the Teacher in Social Change," 17 pp. Test of a talk delivered to the University of Florida Chapter of Kappa Delta Pi at its annual initiation meeting, May 6, 1965. Xeroxed 17 pp.

Katzenbach, Nicholas deB. Address to the Annual Meeting of the American Council on Education, Washington, D. C., October 7, 1965. Xeroxed, 6 pp.

Kerr, Clark, "Students in three decades," *University of California Statewide Bulletin*, University of California, 2: 15, June, 1963.

Kerr, Clark, *The Uses of the University*, Cambridge: Harvard University Press, 1963.

Kirk, Grayson, "A Sanctuary of Concern," *Columbia University Forum*, Summer, 1965, pp. 34-37.

Knorr, O. A., and J. Minter (eds.), *Order and Freedom on the Campus: Rights and Responsibilities of Faculty and Students*, Boulder, Colorado: Western Interstate Commission for Higher Education, 1965, 100 pp.

Kopkind, Andrew, "Of, By and For the Poor: The New Generation of Student Organizers," *The New Republic*, June 19, 1965.

Levine, Martin, "Private Government on the Campus--Judicial Review of University Expulsions," *Yale Law Journal*, 72: 1362-1410, June, 1963.

Liebert, Roland, "Analysis of the American Association of University Professors' Statement on Faculty Responsibility for the Academic Freedom of Students (Committee S Draft, August, 1964) in Relation to the Policies and Principles of the United States National Student Association," from *Student Government Bulletin*, Philadelphia: USNSA.

Life, "A Teacher Sweats It Out (Part III College Pressure)" *Life*, January 22, 1965, pp. 57-65.

Mallery, David, *Ferment on the Campus*, New York: Harper & Row, 1965, 147 pp.

McConnell, T. R., "The Relation of Institutional Goals and Organization to the Administration of Student Personnel Work," in Martin L. Snoke (ed.), *Approaches to the Study of Administration*, Minnesota Studies in Student Personnel Work, Number 9, University of Minnesota Press, Minneapolis, 1960, pp. 19-35.

Methvin, Eugene H., "Behind Those Campus Demonstrations," Reader's Digest, January, 1966, pp. 43-48.

Monypenny, Phillip, "Toward a Standard for Student Academic Freedom," from Academic Freedom, Dobbs Ferry, New York: Oceana Pub., Inc., 1964, pp. 195-205.

Moody, Howard, "Toward a New Definition of Obscenity: Pornography, Prudery, Blasphemy," reprint abridged from Christianity and Crisis, January 25, 1965.

Musgrove, Frank, "The Teen-Age Aristocracy," The Nation, April 26, 1965, pp. 439-442.

Newfield, Jack, "The New Student Radicals," The Nation, May 10, 1965.

Paulsen, James A., "College Student Behavior: Enigma or Dilemma?" Obtained at 1965 National Student Association Conference, Madison, Wisconsin. Xeroxed, 16 pp.

The Port Huron Statement. New York: Students for a Democratic Society, 1964, 63 pp.

Potter, Paul (ed.), Aims of Education, Philadelphia: United States National Student Association, 1963, 89 pp.

Potter, Paul, "The University and the Cold War," Chicago: Students for a Democratic Society. (Based on a speech given December, 1962) 11 pp.

Powledge, Fred, "The Student Left: Spurring Reform," New York Times, March 15, 1965.

Presthus, Robert, "University Bosses: The Executive Conquest of Academe," The New Republic, February 20, 1965, pp. 20-24.

Robinson, Skip (ed.), Readings in Student Community Involvement, Philadelphia: United States National Student Association, 1962, 98 pp.

Sampson, Edward E., Jacob P. Siegel, and Alan N. Schoonmaker, "The FSM and the Berkeley Campus Crisis: A Study in Attitudes," paper read at the Western Psychological Association Meeting, June, 1965. Dittoed, 15 pp.

Sayre, Woodrow Wilson, "It's 'Publish or Perish'," Life, January 22, 1965, p. 66.

Seeley, John R., "Dispatches from Kiev," Dissent, XII: 183, Spring, 1965.

Sharkey, Joel A. (ed.), *A Forward to Academic Reform* [sic], Philadelphia: United States National Student Association, n.d., 87 pp.

Smith, Courtney, "The Academic Community and Social Concerns," *Swarthmore College Bulletin*, December, 1965, pp. 2-7.

Stewart, George R., *The Year of the Oath*, New York: Doubleday and Company, 1950.

Stroup, Herbert H., *Freedom and Responsibility in Hi[illegible] Education--A Study of the Institutional Limitations on Human F[illegible]edom*. Printed by Christian Faith and Higher Education Institute. (No date or place of publishing,) 19 pp.

A Survey of the Political and Religious Attitudes of American College Students. Sponsored by *The Educational Reviewer*, New York, n.d., pp. 280-301.

Taylor, Harold, "Student or Statistic," *Moderator*, Summer, 1965, pp. 17-18.

Thompson, Hunter S., "The Nonstudent Left," *The Nation*, September 27, 1965, pp. 154-158.

Thorburn, David F., "Student Discontent and Academic Reform in the Graduate School: A Graduate Student's Commentary." Speech delivered to the Western Association of Graduate Schools, March 1, 1965, San Francisco.

Trombley, William, "The Exploding University of California," *The Saturday Evening Post*, May 16, 1964, pp. 22-29.

Trombley, William, "Student Ferments Also Affect Stanford Campus," *Los Angeles Times*, January 18, 1965.

Undergraduate Association, *Faculty Synopsis of Spring Courses*, 1965, Berkeley: Undergraduate Association, 1965, 47 pp. + Appendix.

United States National Student Association, *Campus Justice*, Philadelphia: USNSA, n.d., mimeographed, 55 pp.

Unruh, Jesse M., "Universities and Governments," speech for University of California Lecture Series, March 2, 1965, 16 pp.

USNSA staff, *The Idea of a Student*, Philadelphia: United States National Student Association, 1959, 34 pp.

Van Alstyne, William, "Student Academic Freedom and the Rule-Making Powers of Public Universities: Some Constitutional Considerations," *Law in Transition Quarterly*, Winter, 1965, pp. 1-34.

Ward, Bill, "Why the Students Revolt," *The Nation*, January 25, 1965, pp. 81-85.

Watson, James E., "The Place of Controversy on the Campus," *Journal of Higher Education*, January, 1965, pp. 18-24.

Ways, Max, "On the Campus: A Troubled Reflection of the U. S.," *Fortune*, September, 1965, pp. 130-135, 198-221.

Weiss, John, "The University as Corporation," *New University Thought*, 4: 31-45, Summer, 1965.

Williamson, E. G., "Students' Academic Freedom," *The Educational Record*, 44: 214-222, July, 1963.

Williamson, E. G., "Students' Rights and Responsibilities," in *Journal of the National Association of Women Deans and Counselors*, Winter, 1965, pp. 81-87.

Williamson, E. G. and John L. Cowan, *Students and Academic Freedom*. Report to the National Association of Student Personnel Administrators Annual Conference, Washington, D. C., April 5, 1965. Mimeographed, 44 pp.

Wilson, Logan, "The College or University in its Environment: External Constraints," *The Study of Academic Administration*, Boulder, Colorado: Western Interstate Commission for Higher Education, October, 1963, pp. 99-112.

APPENDIX: NOTES TO THE TEXT

1. University of California Policies Relating to Students and Student Organizations, September, 1963 (hereafter referred to as 1963 Policies), p. 2.

2. There were two exceptions: Candidates or their representatives, and "persons supporting or opposing particular propositions in state or local elections," could be "afforded like opportunity to speak" at meetings limited to "the campus community." 1963 Policies, p. 9.

3. Certain athletic events, and "a limited number of fund-raising campaigns by recognized charitable or public service agencies," could be excepted by the Chief Campus Officer. 1963 Policies, p. 9.

4. 1963 Policies, p. 2.

5. This is consistent with statements on page 2 of the 1963 Policies, concerning President Sproul's formulation on August 27, 1934, of "principles which guide the President in these matters and accordingly stand as, in a certain sense, the policy of the University."

6. Editors of California Monthly, "The History of a Student Revolt," in Seymour Martin Lipset and Sheldon S. Wolin (eds.), The Berkeley Student Revolt: Facts and Interpretations, p. 120. (This volume, as the most complete of the several paperback anthologies on the Berkeley events, will be cited frequently as a convenient reference. Mimeographed copies of most of the materials included are available in the project research file. The Lipset and Wolin volume will be referred to as L&W.)

7. Berkeley-Albany Chapter of the American Civil Liberties Union, The Campus and the Constitution, p. 3.

8. L&W, p. 155.

9. Clark Kerr, remarks following speech to American Council on Education, Sheraton Palace Hotel, San Francisco, October 2, 1964, (hereafter called "ACE speech"), p. 1.

10. L&W, p. 114.

11. Senate of the Associated Students of the University of California, Berkeley (ASUC Senate), Minutes of meeting October 13, 1964, p. 9.

12. *ACLU News*, November, 1964, p. 3.

13. See "The Position of the Free Speech Movement on Speech and Political Activity," *L&W*, p. 203.

14. *L&W*, p. 279.

15. See Governor Brown's statement of December 3, 1964, quoted in *L&W*, p. 165.

16. See, e.g., President Kerr's statement of October 4, 1964, quoted at *L&W*, p. 120, and his ACE speech of October 2, 1964, pp. 1-2.

17. See President Kerr's statement of December 3, 1964, quoted in *L&W*, pp. 245-246.

18. *L&W*, p. 162.

19. California State Education Code, Section 23501.

20. See, for example, *Daily Californian*, March 18, 1964.

21. Berkeley-Albany Chapter of ACLU, *The Campus and the Constitution*, p. 4.

22. *L&W*, pp. 202-204.

23. See, e.g., President Kerr's statement of September 25, 1964, quoted in *L&W*, p. 106.

24. See "Report of the Faculty Group on Campus Political Activity," *California Monthly*, February, 1965, p. 81.

25. See *L&W*, pp. 138-141.

26. *California Monthly*, February, 1965, p. 81.

27. The Regents of the University of California, *Minutes* of meeting November 20, 1964, pp. 12-13. Quoted in *L&W*, p. 155.

28. *Ibid.*, p. 13.

29. Thomas J. Cunningham, "Legal Aspects of Campus Unrest," speech delivered before National Association of College and University Attorneys, June, 1965 (copyright 1965, Thomas J. Cunningham), p. 9.

30. *L&W*, pp. 249-250.

31. Committee on Campus Political Activity, Minutes of meeting November 5, 1964, p. 2.

32. Committee on Campus Political Activity, Minutes of meeting November 7, 1964, p. 2. See also L&W, p. 140.

33. CCPA, op. cit., p. 13.

34. Ibid., p. 11.

35. Ibid., pp. 12-13.

36. Berkeley-Albany Chapter of ACLU, op. cit., p. 4.

37. Quoted L&W, p. 156.

38. Ibid., pp. 156-157.

39. Ibid., pp. 180-181.

40. The Regents, Minutes of meeting December 18, 1964, pp. 3-5. Quoted L&W, pp. 194-195.

41. L&W, pp. 195-196.

42. R. H. Cole, H. A. Linde, and R. M. O'Neil, "A Statement to the Committee on Academic Freedom of the Berkeley Division of the Academic Senate, December 14," in L&W, pp. 273-280.

43. David W. Louisell, "A Statement of the Legal Issues," L&W, pp. 280-283.

44. For discussion of "due process" demands made by the FSM, see pp. 125-127.

45. For a discussion of student "civil disobedience" at Berkeley, see Jerome C. Byrne, Report on the University of California and Recommendations to the Special Committee of the Regents of the University of California, May 7, 1965, pp. 38-43. Also available as "The Byrne Report," reprinted from the Los Angeles Times of Wednesday, May 12, 1965.

46. "The Position of the Free Speech Movement on Speech and Political Activity," L&W, pp. 202-204.

47. The Regents, Minutes of meeting of December 18, 1964, p. 3. Quoted L&W, p. 194.

48. Press release of University of California, Berkeley (Public Information Office), on April 21, 1965.

49. See Daily Californian, April 8, 1965, pp. 1, 7; April 23, 1965, p. 7. See "Report and Recommendations of the Ad Hoc Committee on Student Conduct," (Whinnery Committee), April 20, 1965, pp. 1-3.

50. Ibid., p. 14.

51. Daily Californian, March 23, 1965, p. 8.

52. Daily Californian, April 1, 1965, p. 9.

53. Mario Savio, speech at rally in Sproul Hall Plaza on March 11, 1965.

54. Academic Senate of the University of California, Berkeley Division, Minutes of meeting March 12, 1965, pp. ii, iii.

55. Robert M. O'Neil and Sanford Kadish, "Freedom and Four-Letter Words," in California Monthly, May 1, 1965, pp. 18-21.

56. Special Committee to Review University Policies (Meyer Committee), proposed "Universitywide Regulations Relating to Student Conduct, Student Organizations, and Use of University Facilities," p. 2. (Attachment to The Regents, Minutes of meeting April 23, 1965.)

57. See memorandum from Office of the General Counsel to The Regents, "Re: Legal Aspects of University Regulations," April 23, 1965, pp. 1-2, 6-7. (Attachment to The Regents, Minutes of meeting April 23, 1965.)

58. See University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination, July 1, 1965, p. 5 (hereinafter called 1965 Policies).

59. Ibid.

60. See footnote, p. 39 above. See also "Report of Special Committee to Review University Policies," (attachment to The Regents, Minutes of meeting April 23, 1965), p. 7, and memorandum from Office of the General Counsel, same date, p. 5.

61. The Regents, Minutes of meeting June 18, 1965, p. 5.

62. Dixon v. Alabama State Board of Education, 294 F. 2d 150, 157 (5th Cir.), cert. denied, 368 U.S. 930 (1961); and Knight v. State Board of Education, 200 F. Supp. 174, 178 (M.D. Tenn. 1961). See, in general, W. W. Van Alstyne, "Student Academic Freedom and the

Rule-Making Powers of Public Universities: Some Constitutional Considerations," *Law in Transition Quarterly*, winter 1965, pp. 1-34 and materials cited; and Martin Levine, "Private Government on the Campus--Judicial Review of University Expulsions," *Yale Law Journal*, vol. 72, no. 7, June, 1963, pp. 1362-1410.

63. *L&W*, pp. 280-281.

64. Faculty Forum, "Draft of a Faculty Statement on Academic Order and University Self-Government," privately printed, n.d., 2 pp.

65. *L&W*, p. 282.

66. *Daily Californian*, March 23, 1965, p. 8.

67. Quoted in *L&W*, p. 106.

68. Such arguments, made in the December 8 debates of the Academic Senate, Berkeley Division, were repeated in "A Message on the Proposed Solution to the Free Speech Controversy, from: Faculty Members of the University of California at Berkeley, to: Colleagues and Friends in the State-wide University, Members of Other Colleges and Universities, Fellow Citizens," privately printed, n.d., 4 pp.

69. See *L&W*, p. 275.

70. Faculty Forum, *loc. cit.*

71. The distinction intended here is approximately that made by Levine, *op. cit.*, note 62, at pp. 1392-1394, between "institutional interests" and "educational goals,"

72. *L&W*, p. 275.

73. *L&W*, p. 203.

74. *L&W*, p. 275.

75. "Statement by President Clark Kerr, University of California, March 10, 1965," released by Public Information Office, University of California, Berkeley, p. 2. Printed in *Daily Californian*, March 11, 1965, p. 8.

76. *Daily Californian*, March 10, 1965, p. 8.

77. Robert M. O'Neil and Sanford Kadish, op. cit., pp. 20-21; and see above, pp. 39-41.

78. Daily Californian, March 23, 1965, p. 8.

79. See memorandum described in note 57, supra, at pp. 2, 4, citing Webb v. State University of New York (1954) 125 F. Supp 910, 912 and Woods v. Simpson (1924) 146 Md. 547, 126 Atl. 882, 39 A. L. R. 1016, 1018.

80. See above, pp. 41-43 and note 57.

81. See above, pp. 43-43.

82. L&W, pp. 203-204.

83. Faculty Forum, loc. cit.

84. Daily Californian, March 19, 1965, p. 9.

85. ASUC Senate, Minutes of meeting October 13, 1964, p. 13.

86. L&W, p. 106.

87. Special Committee to Review University Policies, op. cit. supra, note 56, p. 2.

88. Op. cit. supra, note 58.

89. University Bulletin, A Weekly Bulletin for the Staff of the University of California, vol. 13, no. 34, May 3, 1965, p. 1.

90. 1963 Policies, p. 5.

91. Ibid., pp. 8-10.

92. Remarks at All-University Meeting, Berkeley Campus, November 2, 1962; Message for Welcome to Cal booklet, March 12, 1964; "The University: Civil Rights and Civic Responsibilities," address at Charter Day ceremonies, Davis campus, May 5, 1964.

93. Op. cit. supra, note 9, p. 3.

94. See, for example, remarks at an All-University meeting in Berkeley concerning the University's refusal to employ Communists, as long ago as November 2, 1962; address at the Greek Theatre on December 7, 1964; Charter Day Message at the Santa Barbara campus on April 7, 1965; and the comment on his statement of intended resignation, printed Daily Californian, March 11, 1965, p. 8.

95. L&W, p. 105.

96. See comments by Sheldon S. Wolin on "The Berkeley Case," and Paul Potter, "Student Discontent and Campus Reform," both in O. A. Knorr and J. Minter (eds.), *Order and Freedom on the Campus: Rights and Responsibilities of Faculty and Students*, Boulder, Colorado: Western Interstate Commission for Higher Education, 1965, pp. 46-47 and 74-75.

97. Quoted in *L&W*, p. 102.

98. Certain Faculty Members of the University of California, Berkeley, "A Suggestion for Dismissal," submitted to the Municipal Court for the Berkeley-Albany Judicial District, in case of *The People of the State of California v. Mario Savio, et al.* January 1965, pp. 16, 18.

99. William Kornhauser *et al.*, "Campus Autonomy and the Regents: A Reply to the Meyer Report," p. 1.

100. Remarks following ACE speech, p. 2.

101. See, for example, Chancellor Strong's speech at the University Meeting on September 28, 1964, quoting from a June 12, 1961 statement by President Kerr: "Subversion and other illegal activities are not tolerated; and we will not employ a Communist. . . . No efforts at conversion and solicitation of members by political or religious groups are permitted on campus . . ." Quoted *L&W*, pp. 239-240.

102. *Ibid.*

103. 1963 *Policies*, pp. 2, 8.

104. Berkeley-Albany ACLU, *op. cit.*, p. 3.

105. ASUC *Minutes* of meeting October 13, 1964, p. 13, and of meeting November 10, 1964, p. 5.

106. *L&W*, pp. 100-101.

107. *L&W*, p. 104.

108. Edward W. Strong, *op. cit.*, *L&W*, p. 239.

109. "Report of the Faculty Group on Campus Political Activity," *California Monthly*, February, 1965, p. 81.

110. *L&W*, p. 250.

111. See Stephan Weissman, comments on "The Berkeley Case," in Knorr and Minter, op. cit. supra, note 96, p. 50: ". . . I think that we proved the importance of speech, because the FSM used speech as a means for a minority to become a majority."

112. Quoted in L&W, p. 218.

113. ASUC Senate, Minutes of meeting October 13, 1964, p. 12.

114. See, for example, Free Speech Movement press releases of October 7 and 13, 1964.

115. Remarks made following ACE speech, p. 1.

116. Quoted in L&W, p. 136.

117. L&W, pp. 154-155.

118. L&W, p. 194.

119. Clark Kerr, "The University: Civil Rights and Civic Responsibilities," address delivered at Charter Day ceremonies, Davis Campus, May 5, 1964, mimeo., 4 pp.

120. Academic Senate, Berkeley Division, Minutes of meeting October 15, 1964, p. v.

121. Remarks following ACE speech, p. 3.

122. L&W, p. 184.

123. L&W, p. 194.

124. It is not implied here that some "democratic government" is not allowed by boards of trustees or regents under this formal authority, but merely that all such allowances rest as a formal matter on the discretion of the board rather than on legal "rights" of members of the university community. On the actual use of their discretion by boards of trustees in the "better" universities generally, cf. P. Lazarsfeld and W. Thielens, The Academic Mind, Glencoe, Illinois: The Free Press, 1958, pp. 178-180.

125. See "Statement by President Clark Kerr (November 12, 1964)," L&W, p. 244.

126. Martin Meyerson, "Fellow Faculty and Students," Daily Californian, March 23, 1965, p. 8.

127. "California Constitution, Article IX, Section 9" (reproduced in *California Monthly*, February, 1965, pp. 76-77).

128. Statement issued at 11:45 p. m., Wednesday, September 30, 1964, by Dr. Edward W. Strong, Chancellor at Berkeley (Office of Public Information, Berkeley campus).

129. See *FSM* (newsletter), October 12, 1964, privately printed, p. 3.

130. Hastings Rashdall, *The Universities of Europe in the Middle Ages*, ed. by T. M. Powicke and A. B. Emden, Oxford: At the Clarendon Press, 1936; Pearl Kibre, *Scholarly Privileges in the Middle Ages*, Cambridge, Mass.: The Medieval Society of America, 1962.

131. See note 127, *supra*.

132. The Regents, *Minutes* of meeting March 26, 1965, p. 5.

133. Jesse M. Unruh, "Universities and Governments," lecture delivered at University of California, Berkeley, March 2, 1965, multilith, p. 11.

134. The "archives" of the FSM contain letters to the Regents of this latter kind, from non-FSM members of the general public.

135. See "The Byrne Report," reprinted from *The Los Angeles Times*, May 12, 1965, p. 4.

136. Jesse M. Unruh, *op. cit.*, pp. 4-5.

137. See Clark Kerr, "The Realities of the Federal Grant University," in *The Uses of the University*, Cambridge, Mass.: Harvard University Press, 1963, pp. 46-84.

138. Homer Babbidge, *The Federal Interest in Higher Education*, New York: McGraw-Hill, 1962; Harold Orlans, *The Effects of Federal Programs on Higher Education*, Washington, D. C.: Brookings Institution, 1962.

139. Clark Kerr, "Toward a Nationwide System of Higher Education?", speech delivered at Forty-Seventh Annual Meeting, American Council on Education, October 2, 1964, San Francisco, pp. 3-4.

140. 1963 *Policies*, p. 8.

141. See Clark Kerr, *op. cit.*, *supra*, note 119, p. 2.

142. This interpretation was implied by the opposing contentions of the ASUC Senate (see note 85, *supra*), and the Berkeley-Albany Chapter ACLU (note 7, *supra*).

143. *L&W*, p. 241.

144. See discussion above, pp. 41 ff.

145. This idea was discussed explicitly by both faculty members and students at a rally in late April, 1965, after the Meyer Committee proposals had appeared.

146. William Kornhauser, *et al.*, *op. cit.*, p. 3.

147. *L&W*, p. 248.

148. CCPA, *Minutes* of meeting November 7, 1964, p. 8.

149. *L&W*, p. 244.

150. See leaflet issued by the FSM, c. December 10, 1964.

151. See CCPA, *Minutes* of meeting November 7, 1964, esp. pp. 11-13, and Stephan Weissman, *op. cit.*, *supra* note 111, at p. 42.

152. Mario Savio, "An End to History," from *Humanity, an arena of critique and comment*, no. 2, December, 1964. Quoted in *L&W*, pp. 216-217. Others have developed this theme recently; among the most insightful is John Weiss, "The University as Corporation," in *New University Thought*, vol. 4, no. 2, Summer, 1965, pp. 31-45.

153. See remarks by David Kolodney, in Knorr and Minter, *op. cit.*, p. 51.

154. See FSM, "We Want a University," *L&W*, p. 210. See also *New York Times*, Monday, March 25, 1965, concerning an inter-university student group which discussed the same idea.

155. See Marvin Garson, *The Regents*, Berkeley: privately printed, 1965, 22 pp., *passim*.

156. FSM, "We Want a University," *L&W*, p. 213.

157. FSM, "The Principles Behind the FSM Platform," leaflet issued November 20, 1964.

158. Clark Kerr, "The Idea of a Multiversity," in *The Uses of the University*, Cambridge, Mass.: Harvard University Press, p. 36.

159. 1963 *Policies*, p. 11.

160. *L&W*, p. 182.

161. Jack Weinberg, "The Free Speech Movement and Civil Rights," *L&W*, pp. 220-225, at 223.

162. Robert Middlekauf and Irwin Scheiner, "A Note on the Academic Senate's Powers and Student Discipline," mimeo., n. d., 1 p.

163. *L&W*, p. 194.

164. Faculty Forum, *loc. cit.*

165. See *University Bulletin*, June 1, 1965, p. 243.

166. William Kornhauser, *et al.*, *op. cit.*, pp. 1, 4.

167. *Daily Californian*, March 23, 1965, p. 8.

168. Richard Schmorleitz, *For Unlawful Carnal Knowledge*, 17 pp.

169. Section IV, "The Byrne Report," reprinted from *Los Angeles Times* of May 12, 1965, p. 8.

170. The Regents, *Minutes* of meeting May 21, 1965, p. 10.

171. The Regents, *Minutes* of meeting June 18, 1965, pp. 1-2.

172. July 1, 1965 *Policies*, p. 4.

173. See "Report of the Ad Hoc Committee on Student Conduct," (Heyman Committee), *California Monthly*, February, 1965, pp. 82-87, at 85.

174. See Committee on Educational Policy of The Regents, *Minutes* of meeting March 25, 1965, pp. 6-7; The Regents, *Minutes* of meeting March 26, 1965, p. 9; cf. the Committee's *Minutes* of meeting on April 22, 1965, pp. 3-5, and meeting of May 20, 1965, pp. 2-4; and The Regents' *Minutes* of meeting April 23, 1965, pp. 6-7. By June, 1965, the matter of compulsory student fees had been included in the proposed new *Policies*.

175. 1963 *Policies*, pp. 11-13.

176. See David Horowitz, *Student*, pp. 299 ff.

177. Committee on Educational Policy of The Regents, *Minutes* of meeting March 25, 1965, pp. 12-14, at 13.

178. Special Committee to Review University Policies, *op. cit. supra*, note 56, p. 5.

179. William Kornhauser *et al.*, *op. cit.*, p. 4.

180. Section III, "The Byrne Report," *op. cit.*, p. 17.

181. July 1, 1965 *Policies*, pp. 7-8.

182. See Sidney Ingerman, "Employed Graduate Students Organize at Berkeley," *Industrial Relations*, October, 1965, pp. 141-150; also Union of Employed Students, "This is a Gimmick--pure 'n simple . . . ," informational leaflet, September, 1965.

183. FSM, leaflet issued c. March 12, 1965.

184. Free Speech Movement, "A Declaration of Independence," leaflet issued April 28, 1965.

185. *Daily Californian*, May 19, 1965, p. 1.

186. See The Regents, *Minutes* of meeting May 21, 1965, pp. 7, 19; *Minutes* of meeting June 18, 1965, p. 8. See also Free Student Union, "Mr. Chairman! " leaflet issued c. May 24, 1965.

187. Free Student Union, "Join the Union," leaflet issued April 30, 1965.

188. See Abraham Kaplan, *The Conduct of Inquiry*, San Francisco: Chandler Publishing Co., 1964, pp. 370-387.

189. See, among others, Arthur S. Miller, *Private Governments and the Constitution*, An Occasional Paper on the Role of the Corporation in the Free Society, Santa Barbara: Center for the Study of Democratic Institutions, 1959 (includes selected bibliography); A. A. Berle, "Property, Production, and Revolution," *Columbia Law Review*, January, 1965; Philip Selznick, "Private Government and the Corporate Conscience," paper prepared for the Symposium on Business Policy, April 8-11, 1963, Graduate School of Business Administration, Harvard University, dittoed, 46 pp.; Levine, *op. cit. supra*, note 62 (with citations at p. 1389).

190. See note 62, *supra*; also U. S. National Student Association, "Campus Justice," Philadelphia: USNSA, n. d., mimeo., 55 pp.; and other compilations by the same Association: *Student-Faculty-Administration Relations*, n. d.; *Academic Freedom*, n. d.; and Neal Johnston (ed.), *In Loco Parentis*, 1962.

191. See above, pp. 66 ff., and below, pp. 130-132.

192. As general references, see Peter M. Blau and W. Richard Scott, *Formal Organizations*, San Francisco: Chandler Publishing Co., 1962; A. Etzioni, *Complex Organizations: A Sociological Reader*, New York: Holt, Rinehart, and Winston, 1961; A. Etzioni, *Modern Organizations*, Englewood Cliffs, New Jersey: Prentice-Hall, 1964; H. Simon, *Administrative Behavior*, 2d ed., New York: Macmillan, 1957; P. Selznick, "Foundations of the Theory of Organization," *American Sociological Review*, 13 (1948), pp. 25-35.

193. E. g., Robert Michels, *Political Parties*, New York: Dover Press, 1959; Robert K. Merton, *Social Theory and Social Structure*, Glencoe, Ill.: The Free Press, 1957, pp. 197 ff.; Morris Janowitz, "Changing Patterns of Organizational Authority," *Administrative Science Quarterly*, 3 (1959), pp. 473-493.

194. See P. Selznick, *op. cit.*; Roethlisberger, F. J. and W. J. Dickson, *Management and the Worker*, Cambridge, Mass.: Harvard University Press, 1939: P. Blau and R. Scott, *op. cit.*, pp. 89-100, 234-237; A. Etzioni, *Modern Organizations*, pp. 45-47.

195. E. g., Burton R. Clark, *Adult Education in Transition*, Berkeley: University of California Press, 1958.

196. See A. W. Gouldner, "Cosmopolitans and Locals: Toward an Analysis of Latent Social Roles," *Administrative Science Quarterly* (1957), 2: 281-306; Harold L. Wilensky, *Intellectuals in Labor Unions*, Glencoe, Ill.: The Free Press, 1956, pp. 129-144.

197. See Philip Selznick, "Sociology of Law," article prepared for *International Encyclopedia of the Social Sciences* (forthcoming); Anne Rankin, "A Selected Bibliography in the Sociology of Law," *Law and Society, A Supplement to the Summer Issue of Social Problems*, 1965, pp. 54-57; and Jerome H. Skolnick, "The Sociology of Law in America: Overview and Trends," *Law and Society*, *op. cit.*, pp. 4-38. See also Carl A. Auerbach, "Comments" on Skolnick's article, mimeo., n. d., 14 pp. with further references.

198. See note 189 *supra*, esp. Selznick, *loc. cit.*

199. Paul Heist, "Intellect and Commitment: The Faces of Discontent," in Knorr and Minter, *op. cit.*, pp. 61-70.

200. See discussion of "The Berkeley Case," Knorr and Minter, *op. cit.*, at p. 52.

201. Frederick Rudolph, *The American College and University: A History*, New York: Alfred A. Knopf, 1962; R. Hofstadter and W. Metzger, *The Development of Academic Freedom in the United States*, New York: Columbia University Press, 1955.

202. See note 190, supra, and American Association of University Professors, Committee "S," "Statement of Faculty Responsibility for the Academic Freedom of Students," AAUP Bulletin, vol. 50, no. 3 (September, 1964), pp. 254-257.

203. See Friedrich Paulsen, The German Universities: Their Character and Historical Development, transl. E. D. Perry, New York: Macmillan and Co., 1895; F. Paulsen, The German Universities and University Study, transl. by Frank Thilly and W. W. Elwang, New York: Longmans Green and Co., 1906; F. Paulsen, German Education: Past and Present, transl. T. Lorenz, London: Adelphi Terrace, 1908, pp. 185 ff.; Paul Farmer, "Nineteenth Century Ideas of the University," in Margaret Clapp (ed.), The Modern University, Ithaca: Cornell University Press, 1950; J. Ben-David and A. Zloczower, "Universities and Academic Systems in Modern Societies," European Journal of Sociology, III, 1962, pp. 45-85; A. Flexner, Universities: American, English, German, New York: Oxford University Press, 1930.

204. See A. Carr-Saunders, New Universities Overseas, London: Allen and Unwin, 1961.

205. See p. 84, supra.

206. H. Gerth and C. W. Mills, (trans. and eds.), From Max Weber: Essays in Sociology, New York: Oxford University Press, 1946, p. 214; R. Bendix, Max Weber: An Intellectual Portrait, Garden City, New York: Anchor Books, 1960, p. 426.

207. Cf. A. Etzioni, Modern Organizations, p. 3; M. Crozier, The Bureaucratic Phenomenon, Chicago: University of Chicago Press, 1964.

208. Blau and Scott, Formal Organizations, p. 27.

209. E.g., B. R. Clark, "Faculty Authority," AAUP Bulletin, vol. 47, no. 4, (winter, 1961), pp. 293-302; and "Faculty Organization and Authority," in T. F. Lunsford (ed.), The Study of Academic Administration, Boulder, Colorado: Western Interstate Commission for Higher Education, 1963, pp. 37-52; G. Lester Anderson, "The Organizational Character of American Colleges and Universities," ibid., pp. 1-20; J. D. Millett, The Academic Community: An Essay on Organization, New York: McGraw-Hill, 1962; J. J. Corson, Governance of Colleges and Universities, New York: McGraw-Hill, 1962; A. Etzioni, Modern Organizations, pp. 75-93; Litchfield, E. H., "Organization in Large American Universities: The Administration," Journal of Higher Education, vol. 30 (December, 1959), pp. 489-504.

210. B. R. Clark, "Faculty Authority," *loc. cit.*

211. B. R. Clark, "Faculty Organization and Authority," *loc. cit.*; and Etzioni, *loc. cit.*; see also Blau and Scott, *Formal Organizations*, pp. 60-64, 208-209, 244-247.

212. Academic Senate, Berkeley Division, *Minutes* of meetings on December 8, 1964 and April 5, 1965.

213. Section II, "The Byrne Report," *op. cit.*, pp. 6, 18. Some faculty members as well as administrators suggest that this may be advantageous as compared with university operation under a detailed code of rules. However, the ambiguity of authority was seen by the FSM mainly as evidence that the Regents and the administration wished to rule by "fiat."

214. "The Byrne Report," *op. cit.*, p. 8.

215. See note 194, *supra*.

216. On the distinction between formal and substantive rationality, see M. Rheinstein (ed.), *Max Weber on Law in Economy and Society*, pp. 224 ff.; and R. Bendix, *Max Weber: An Intellectual Portrait*, pp. 398-400.

217. For an interesting perspective on the effect of large-campus facilities on student "crowd behavior," see Samuel Kaplan, "The Revolt of an Elite: Sources of the FSM Victory," in *The Graduate Student Journal*, no. 4, spring, 1965, pp. 26-30 and 75-90, at 83.

218. Burton R. Clark, "The Culture of the College: Its Implications for the Organization of Learning Resources," paper prepared for Conference on the Library and the College Climate of Learning, Syracuse University, June 20-23, 1965, typed, 23 pp.

219. Martin Meyerson, release "To the Educational Press," January 13, 1965, mimeo., p. 5.

220. See Martin Trow, "Administrative Implications of Analyses of Campus Cultures," in T. Lunsford (ed.), *The Study of Campus Cultures*, Boulder, Colorado: Western Interstate Commission for Higher Education, 1962, pp. 95-111; and "The Campus as a Context for Learning," paper read at the Annual Conference of the National Association of Student Personnel Administrators, Detroit, Michigan, April 7, 1964, dittoed, 26 pp.

221. Martin Meyerson, address to "Senate Colleagues" at Berkeley, March 1, 1965, mimeo., 10 pp.

222. There is much interest today in "innovations" in American universities and colleges. (See, for example, Samuel Baskin, ed., *Higher Education: Some Newer Developments*, New York: McGraw-Hill, 1965.) We need much more understanding of the relation between innovation and the processes of university governance. See Victor A. Thompson, "Bureaucracy and Innovation," *Administrative Science Quarterly*, (June, 1965), pp. 1-21.

223. See Office of the President, University of California, memorandum of April 23, 1965, "Re: A Progress Report on Administrative Changes and Developments at the University of California," and memorandum of June 18, 1965, "Re: Organization of the University." See also The Regents, *Minutes* of meetings of May 21, June 18, and July 16, 1965.

224. See, for example, "A Proposed Academic Plan for the University of California," approved in principle by The Regents on July 21, 1961, mimeo., pp. 24-25.

225. William Kornhauser *et al.*, *Campus Autonomy and the Regents: A Reply to the Meyer Report*, p. 1.

226. See T. R. McConnell, *A General Pattern for American Public Higher Education*, New York: McGraw-Hill, 1962; Lyman Glenny, *Autonomy of Public Colleges: The Challenge of Coordination*, New York: McGraw-Hill, 1959; Arthur D. Browne, "The Institution and the System: Autonomy and Coordination," in O. A. Knorr (ed.), *Long-Range Planning in Higher Education*, Boulder, Colorado: Western Interstate Commission for Higher Education, 1965, pp. 39-52.

227. Section IV, "The Byrne Report," *op. cit.*, p. 18

228. Cf. John Corson, *Governance of Colleges and Universities*, New York: McGraw-Hill, 1960, pp. 19-22.

229. Clark Kerr, *The Uses of the University*, p. 38.

230. Nevitt Sanford (ed.), *The American College*, New York: Wiley, 1962, pp. 817, 970.

231. Theodore Caplow and Reece J. McGee, *The Academic Marketplace*, New York: Basic Books, 1958, p. 4.

232. Philip Selznick, *Leadership in Administration*, New York: Row, Peterson and Co., 1957, p. 149.

233. Such suggestions tend to be stoutly resisted in today's university, however, on the ground that the creation of "two classes of faculty" can only result in one "class's" being seen as inferior, with disastrous consequences for recruitment.

234. Cf. B. R. Clark, "Faculty Authority," op. cit., p. 301, and Etzioni, Modern Organizations, p. 85.

235. See William Kornhauser, Scientists in Industry, Berkeley: University of California Press, 1962 passim; and Bernard Barber, Science and the Social Order, New York: Collier Books, 1962, pp. 178 ff.

236. See Robert M. Hutchins, "The Democratic Dilemma," and "Education and Independent Thought," in Freedom, Education, and the Fund: Essays and Addresses, 1946-56, New York: Meridian Books, 1956, pp. 101-166.

237. Walter Metzger makes the point that the "public" which academic freedom serves is no specific, present public but "an abstraction called 'posterity.'" Academic Freedom in the Age of the University, New York: Columbia University Press, 1961, p. 136; see also p. 232.

238. See Graduate Coordinating Committee, "Who Are the April Fools?", leaflet distributed April 1, 1965: "Your Professors urged you to probe and criticize: when your criticisms began to convince, they told you that you were destroying the University."

239. See Paul Potter, "Student Discontent and Campus Reform," in Knorr and Minter (eds.), Order and Freedom on the Campus, at p. 72.

240. This insight has been formulated in varying ways by sociologists. See, for example, P. Selznick, "Foundations of the Theory of Organization," American Sociological Review, 13 (1948), 25-35, at 25-26.

241. The Role of the Trustees of Columbia University, report of a special committee of the trustees, adopted by the trustees November 4, 1957. Cf. Corson, op. cit., pp. 49-58, and references there cited. See also Victor S. Bryant, "The Role of the Regent," AAUP Bulletin, vol. 50, no. 4 (December, 1964), pp. 317-322.

242. Lazarsfeld and Thielens, The Academic Mind, pp. 178-180.

243. Logan Wilson, "The Academic Man Revisited," in Studies of College Faculty, Boulder, Colorado: Western Interstate Commission for Higher Education, 1961, p. 3.

244. See John Weiss, "The University as Corporation," *loc. cit.*

245. See Clark Kerr, *The Uses of the University*, pp. 29-41.

246. See note 154, *supra*.

247. Cf. Thorstein Veblen, *The Higher Learning in America*, New York: The Viking Press, 1935; and Walter Metzger, *Academic Freedom in the Age of the University*, pp. 139-193.

248. For a recent attempt to study this question empirically, see A. H. Hawley, Walter Boland, and Margaret Boland, "Population Size and Administration in Institutions of Higher Education," *American Sociological Review*, vol. 30, no. 2 (April, 1965), pp. 252-255.

249. Burton R. Clark, "Faculty Authority," *AAUP Bulletin*, vol. 47, no. 4 (Winter, 1961), pp. 293-302, at 297.

250. For example, Clark Kerr, op. cit.; Harold W. Dodds, *The Academic President--Educator or Caretaker?*, New York: McGraw-Hill, 1962; H. W. Stoke, *The American College President*, New York: Harper and Brothers, 1959.

251. See note 189, *supra*.

252. *L&W*, p. 155.

253. "Appendix C: Types of Discipline," 1965 *Policies*, pp. 11-12.

254. Martin Meyerson, "Fellow Faculty and Students," *Daily Californian*, March 23, 1965: "Discretion is necessary because at a university we must operate under general rules of conduct."

255. See notes 62 and 190, *supra*.

256. Cf. Levine, *op. cit.*, note 62, *supra*, pp. 1392-1395.

257. L. L. Fuller, *The Morality of Law*, New Haven and London: Yale University Press, 1964, pp. 171-175.

258. See note 216, *supra*.

259. See esp. FSM-GCC, "Three Students Suspended, One Dismissed, By Star-Chamber Committee," and "The Honeymoon is Over," leaflets distributed April 22 and 23, 1965.

260. *L&W*, p. 278.

261. Martin Meyerson, remarks printed in *Daily Californian*, March 19 and 23, 1965.

262. 1965 *Policies*.

263. See notes 62 and 190, *supra*.

264. Herbert A. Simon, *Administrative Behavior*, 2d ed., New York: Macmillan, 1957, pp. 123 ff., esp. 125-128.

265. T. D. Weldon, *The Vocabulary of Politics*, Pelican Books, 1953, pp. 50-56, quoted in Carl J. Friedrich (ed.), *Authority*, Cambridge, Mass.: Harvard University Press, 1958, p. 35.

266. Max Weber, "The Three Types of Legitimate Rule" (transl. by Hans Gerth), in Etzioni, *Complex Organizations: A Sociological Reader*, pp. 4-14, at 4.

267. B. R. Clark, "Faculty Authority," *loc. cit.*

268. Buell G. Gallagher, "Who Runs the Institution?" in Knorr and Minter (eds.), *Order and Freedom on the Campus*, pp. 89-96.

269. Blau and Scott, *Formal Organizations*, pp. 35-36; Etzioni, *Modern Organizations*, p. 76.

270. Stephan Weissman, in discussion of "The Berkeley Case," Knorr and Minter (eds.), *Order and Freedom on the Campus*, p. 50.

271. On recent developments in student demands for autonomy, see John R. Seeley, "Dispatches from Kiev," *Dissent*, vol. XII, no. 2, pp. 183 ff.; Jake Bair, "The Spanish Student Movement," *Studies on the Left*, vol. 5, no. 3, 1965, pp. 3-20; "Cordoba Manifesto," in Neal Johnston (ed.), *In Loco Parentis*, Philadelphia: U S. National Student Association, 1962. For earlier periods, see (e.g.) Rashdall, *op. cit.*; Friedrich Paulsen, *The German Universities and University Study*, (transl. by Frank Thilly and W. W. Elwang), New York: Longmans Green and Co., 1906; Nicholas Hans, *Russian Educational Policy (1701-1917)*, New York: Russell and Russell, 1964, esp. p. 171.

272. See, e.g., *L&W*, p. 125; FSM, "A Declaration of Independence," leaflet distributed April 28, 1965; and FSU, "Join the Union," leaflet of April 30, 1965.

273. Max Weber, *The Theory of Social and Economic Organization*, transl. by A. M. Henderson and Talcott Parsons, ed. and with an introduction by Talcott Parsons, Glencoe, Ill.: The Free Press,

1947; G. Ferrero, The Principles of Power, New York: G. Putnam's Sons, 1942; H. Arendt, "What Was Authority?" in Carl J. Friedrich (ed.), Authority, Cambridge, Mass.: Harvard University Press, 1958; S. M. Lipset, Political Man, Garden City, New York: Doubleday and Co., 1963.

274. R. Bendix, Max Weber: An Intellectual Portrait, pp. 291-416, and references cited.

275. P. Selznick, "Sociology of Law," article prepared for the International Encyclopedia of the Social Sciences (forthcoming), mimeo., April, 1965, pp. 10 ff.

276. William Kornhauser, et al., "Campus Autonomy and the Regents: A Reply to the Meyer Report," esp. p. 2, and, generally, the companion "Critique of the Meyer Committee Regulations."

277. Roscoe Pound, "The Limits of Effective Legal Action," International Journal of Ethics, 27 (1917), pp. 150-167.

278. P. Selznick, "Legal Institutions and Social Control," Vanderbilt Law Review, vol. 17, no. 1, pp. 79-90; Joseph R. Gusfield, "Social Sources of Levites and Samaritans," address, Conference on the Good Samaritan and the Bad, University of Chicago Law School, April 11, 1965 (excerpted in Current, July, 1965, pp. 41-44).

279. Address to California Newspaper Publishers' Association, Sacramento, February, 1965, mimeo., p. 9.

280. L&W, p. 201.

281. American Association of University Professors, Committee "S," loc. cit.

282. American Civil Liberties Union, "Academic Freedom and Civil Liberties of Students in Colleges and Universities," New York: ACLU, rev. ed., November, 1963, 16 pp.

283. In general, however, aliens residing in the United States are guaranteed freedom of speech. See Bridges v. Wixon, 326 U.S. 135, 89 L. Ed. 2103, 65 S. Ct. 1443.

284. Cf. Sweezy v. New Hampshire, 345 U.S. 234 (1957) and West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943).

285. See Walter Metzer, Academic Freedom in the Age of the University, pp. 112 ff.; Phillip Moneypenny, "Toward a Standard for Student Academic Freedom," in Academic Freedom--The Scholar's Place in

Modern Society, Dobbs Ferry, New York: Oceana Publications, Inc., 1964; and E. G. Williamson, "Students' Academic Freedom," *The Educational Record*, vol. 44, no. 3, July, 1963, pp. 214-222.